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December 11, 2023

The Honorable Cynthia T. Brown

Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

VIA E-FILING

Re: *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC—Acquisition and Operation— Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Mississippi and Choctaw and Marengo Counties, Alabama*

Finance Docket No. 36732

Dear Ms. Brown:

In compliance with the Board's Decision No. 3, attached for filing in the above docket are Public, Confidential and Highly Confidential versions of Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company's Application updated to reflect the revisions and changes in confidentiality designations directed by the Board and designated as CPKC-11.

In addition, CPKC added consecutive page numbers which were inadvertently omitted from the original filing. CPKC also corrected minor, non-material errors in Table 1 of Exhibit 15 – Operating Plan. Specifically, CPKC updated the Base Year GTM's for the Meridian – Whynot and Pennington – Naheola segments, and total GTM's to match the Base Year GTM's appearing in Table 1 of Exhibit 4 – Environmental Information for those same segments. The difference between the tables resulted from a minor adjustment to the mileages for those segments. No change was made to Table 1 of Exhibit 4.

Please let me know if you have any questions.

Sincerely,

Stinson LLP

/s/ David F. Rifkind

David Rifkind

DFR:kr

Attachments

cc: Parties of Record; Secretary of Transportation; Attorney General (w/Public Version)
Parties of record that have Executed the Protective Order Undertaking (w/Confidential and Highly Confidential Versions)

October 6, 2023

The Honorable Cynthia T. Brown

Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

VIA E-FILING

Re: *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC—Acquisition and Operation— Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Mississippi and Choctaw and Marengo Counties, Alabama*

Finance Docket No. 36732

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are two versions of the Application for a Minor Transaction (designated as CPKC-2) of Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC. One version, marked as "PUBLIC," and from which sensitive financial, commercial, and operating information has been redacted, is to be filed on the public record. The second, marked as "HIGHLY CONFIDENTIAL," is an unredacted version to be filed under seal. In preparation for this filing, Applicants filed a Motion for a Protective Order on September 28, 2023 in this proceeding. Colored exhibits are included in both versions of the Application.

The filing fee for this Minor Application under 49 C.F.R. § 1002.2(f)(39)(iii) has been tendered electronically via Pay.gov.

Sincerely,

Stinson LLP

/s/ David F. Rifkind

David Rifkind

DFR:kr

Attachments

cc (w/ Public version of Application)

The Honorable Merrick B. Garland
The Honorable Pete Buttigieg
The Honorable Lina M. Khan
The Honorable Kay Ivey

The Honorable Cynthia T. Brown

Page 2

The Honorable Sarah Huckabee Sanders
The Honorable JB Pritzker
The Honorable Eric J. Holcomb
The Honorable Kim Reynolds
The Honorable Laura Kelly
The Honorable John Bel Edwards
The Honorable Janet T. Mills
The Honorable Gretchen Whitmer
The Honorable Tim Walz
The Honorable Tate Reeves
The Honorable Michael L. Parson
The Honorable Kathy Hochul
The Honorable Doug Burgum
The Honorable J. Kevin Sitt
The Honorable Kristi Noem
The Honorable Bill Lee
The Honorable Greg Abbott
The Honorable Phil Scott
The Honorable Tony Evers
The Honorable Andrew Cavanaugh
The Honorable Katie Anderson
The Honorable Doug P. Scott
The Honorable Jim Huston
The Honorable Stephen K. Bayens
The Honorable Andrew J. French
The Honorable Eric Skrmetta
The Honorable Philip L. Bartlett II
The Honorable Dan Sripps
The Honorable Katie Sieben
The Honorable Dane Maxwell
The Honorable Scott T. Rupp
The Honorable Rory M. Christian
The Honorable Randy Christmann
The Honorable Todd Hiett
The Honorable Kristie Fiegen
The Honorable Herb Hilliard
The Honorable Kathleen Jackson
The Honorable June E. Tierney
The Honorable Rebecca Cameron Valcq
The Honorable John Cooper
The Honorable Alec Farmer
The Honorable Omer Osman
The Honorable Chris Creighton
The Honorable Charese E. Yanney
The Honorable Calvin Reed
The Honorable Dr. Eric Kalivoda
The Honorable Bruce A. Van Note
The Honorable Troy Hagon
The Honorable Nancy Daubenberger
The Honorable Tom King
The Honorable Terry L. Ecker
The Honorable Marie Therese Dominguez
The Honorable Ron Henke
The Honorable Tim Gatz

The Honorable Cynthia **T. Brown**
Page 3

The Honorable Joel Jundt
The Honorable Butch Eley
The Honorable J. Bruce Bugg, Jr.
The Honorable Joe Flynn
The Honorable Craig Thompson

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

**APPLICATION FOR A
MINOR TRANSACTION**

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October 6, 2023

*Counsel for Canadian Pacific Kansas
City Limited and The Kansas City
Southern Railway Company d/b/a CPKC*

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF ABBREVIATIONS	v
SUMMARY	3
I. KCS'S PROPOSED ACQUISITION AND OPERATION OF THE WESTERN LINE IS A MINOR TRANSACTION.	3
II. STANDARD OF REVIEW	6
III. PROPOSED PROCEDURAL SCHEDULE.....	7
IV. APPLICATION INFORMATION	9
<i>Section 1180.6 Supporting Information</i>	9
(a) (1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:.....	9
(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the Transaction can be addressed.	9
(ii) The proposed time schedule for consummation of the proposed transactions.....	9
(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.	10
(iv) The nature and amount of any new securities or other financial arrangements.....	14
(a) (2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including.....	14
(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.....	14
(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, in any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of te proposed transaction.....	15
(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.	16
(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.....	17

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.....	17
(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. § 11324.....	18
(a) (3) Any other supporting or descriptive statements applicants deem material.	18
(a) (4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.....	19
(a) (5) A list of the State(s) in which any part of the property of each applicant carrier is situated.	19
(a)(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.....	20
(a) (7) Explanation of the transaction.	20
(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).	20
(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.....	20
(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.....	20
(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.....	21
(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.	21

(vi) Briefly describe the principal routes and terminal of lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.	21
(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.....	22
(b) (8) Environmental data. Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board’s Office of Environmental Analysis for the proper format of the environmental report.	22
<i>1180.8. Operational Data</i>	22
(c) For minor transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:	22
(1) Traffic level density on lines proposed for joint operations.....	22
(2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.	23
(3) Operating economies, which include, but are not limited to, estimated savings.	23
(4) Any anticipated discontinuances or abandonments.	23
<i>1180.11 Transnational and other informational requirements</i>	23
(a) For applicants whose systems include operations in Canada or Mexico, applicants must explain how cooperation with the Federal Railroad Administration would be maintained to address potential impacts on operations within the United States of operations or events elsewhere on their systems.	23
(b) All applicants must assess whether any restrictions or preferences under foreign or domestic law or policies could affect their commercial decisions, and discuss any ownership restrictions applicable to them.	24
CONCLUSION.....	24

APPENDICES, EXHIBITS, AND SUPPORTING STATEMENTS

Exhibit 1: Maps

Map A: CPKC System Map

Map B: MNBR System Map

Exhibit 2: Draft Purchase Agreement and Retained Trackage Rights Agreement

Exhibit 4: Environmental Information

Exhibit 15: Operating Plan – Minor (Verified Statement of Raymond A. Elphick)

Appendix 1: Opinion of Counsel for Applicant

Appendix 2: Verified Statement of James D. Clements

Appendix 3: Verified Statement of Jonathan Wahba

Appendix 4: Verified Statement of Matthew O. Walsh

Appendix 5: Letters of Support

Alliance For Growth

City of Meridian, Mississippi

Commissioner Willie Simmons, State of Mississippi Transportation
Commission

East Mississippi Business Development Corporation
Executive Director Brad White, Mississippi Department of
Transportation

Lauderdale County Board of Supervisors

Mississippi Development Authority

Representative Charles Busby, Mississippi House of Representatives

Senator Rod Hickman, Mississippi Senate

Southern Rail Commission

TABLE OF ABBREVIATIONS

AGR	Alabama & Gulf Coast Railway L.L.C.
Applicants	CPKCL and KCS
Board	Surface Transportation Board
CMQ	Central Maine & Quebec Railway US Inc.
CPKC	Canadian Pacific Kansas City, consisting of the United States, Canadian and Mexican railroad operating subsidiaries of CPKCL
CPKCL	Canadian Pacific Kansas City Limited
CPRC	Canadian Pacific Railway Company
CSXT	CSX Transportation, Inc.
D&H	Delaware and Hudson Railway Company, Inc.
Eastern Line	The line of railroad between Myrtlewood and Burkville, Alabama
FRA	Federal Railroad Administration
G&W	Genesee & Wyoming Inc.
KCS	The Kansas City Southern Railway Company
MNBR	Meridian & Bigbee Railroad, L.L.C.
NOPB	New Orleans Public Belt Railway
NS	Norfolk Southern Railway Company
Soo Line	Soo Line Railroad Company and its U.S. rail carrier subsidiaries
Transaction Agreement	The draft agreement between CPKC and G&W and each of their relevant subsidiaries for CPKC's acquisition of MNBR's Western Line
Western Line	Approximately 50.4± route miles of rail line between Meridian, Mississippi and Myrtlewood, Alabama

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

**APPLICATION FOR A
MINOR TRANSACTION**

Canadian Pacific Kansas City Limited (“CPKCL”), a non-carrier, on behalf of itself and its wholly-owned subsidiary, The Kansas City Southern Railway Company (“KCS”) d/b/a CPKC (collectively, “Applicants”), file this minor application pursuant to 49 U.S.C. §§ 11323-11325 and 49 C.F.R. Part 1180 seeking approval from the Surface Transportation Board (the “Board”) for KCS to acquire from Meridian & Bigbee Railroad, L.L.C. (“MNBR”) and to operate approximately 50.4± route miles of rail line between Meridian, Mississippi and Myrtlewood, Alabama (the “Western Line”).¹

¹ The following transactions are related to the instant transaction: Docket No. FD 36727, *CSX Transportation, Inc.—Acquisition—Rail line of Meridian & Bigbee Railroad, L.L.*; Docket No. AB-55 (Sub-No. 814X), *CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—in Marengo & Choctaw Counties, AL & Lauderdale County, MS*; Docket No. FD 36371, *Alabama & Gulf Coast Railway, LLC—Trackage Rights Exemption—The Kansas City Southern Railway Company d/b/a Canadian Pacific Kansas City*; Docket No. FD 36730, *CSX Transportation, Inc.—Trackage Rights Exemption—Kansas City Southern Railway Company*.

KCS is acquiring the Western Line in order to establish a direct, efficient interchange with CSXT at Myrtlewood, creating a new east-west Class I freight rail corridor linking CPKC-served markets in Mexico and the Southwestern United States with CSXT-served markets in the Southeastern United States and beyond. The new freight rail corridor will provide a shorter and more efficient route for existing CPKC-CSXT traffic and will provide a new, highly attractive option for new customers, thereby enhancing competition.

The Transaction will not harm competition. It involves an entirely end-to-end acquisition. Further, MNBR will retain exclusive trackage rights over the Western Line to provide local service and some overhead service without any restriction on interchange. Thus, existing shippers on the Western Line will continue to enjoy the same rail service and options that they receive today, while shippers in CSXT-served and CPKC-served markets will benefit from the establishment of fast, reliable, and environmentally friendly premium rail service over the new Class I east-west freight rail corridor.

The Transaction builds, and is contingent, on CSXT retaking possession of its line east of Myrtlewood and resuming operations between Myrtlewood and Burkville, Alabama (the “Eastern Line”). Currently, MNBR operates the Eastern Line pursuant to a lease that is scheduled to expire in November 2023. CSXT’s retaking possession of, investment in, and resumption of operations on the Eastern Line will enable CSXT to interchange efficiently with CPKC, MNBR, and Alabama & Gulf Coast Railway LLC (“AGR”) at Myrtlewood and to provide premium train service over the Eastern Line. Contemporaneously with this Minor Application, CSXT is filing a Minor Application to retake possession and operate the Eastern Line.²

² Docket No. FD 36727, *CSX Transportation, Inc.—Acquisition—Rail line of Meridian & Bigbee Railroad, L.L.C.*

Applicants respectfully request Board approval for KCS's acquisition and operation of the Western Line from MNBR (the "Transaction"). This Application demonstrates that the Transaction: (1) is a minor transaction; and (2) satisfies the criteria for approval under 49 U.S.C. § 11324(d) (*i.e.*, it is not likely to substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States).

SUMMARY

Applicants request that the Board approve this minor application for KCS to acquire from the MNBR and operate approximately 50.4± miles of rail line as described more precisely below and as identified on Map B of Exhibit 1.

I. KCS'S PROPOSED ACQUISITION AND OPERATION OF THE WESTERN LINE IS A MINOR TRANSACTION.

The Transaction is a minor transaction, as that term is defined in the Board's regulations at 49 C.F.R. § 1180.2(c). The Transaction does not involve the control or merger of two Class I railroads and therefore is not a major transaction under 49 C.F.R. § 1180.2(a). In addition, the Transaction is not a "significant" transaction under 49 C.F.R. § 1180.2(b). Under the Board's rules, a non-major transaction is not significant if a determination can be made either:

- (1) [t]hat the transaction clearly will not have any anticompetitive effects, or
- (2) [t]hat any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

49 C.F.R. § 1180.2(b). The Board has found that it was unlikely that a transaction would have "any anticompetitive effects" in proceedings where it appeared no "shipper would have fewer competitive rail options." *Norfolk Southern Ry Co. and The Cincinnati, New Orleans and Texas Pacific Ry Co.—Acquisition—Trustees of the Cincinnati Southern Ry.*, ("CNOTP/Trustees") FD 36699, slip op. at 4 (STB served Sep. 20, 2023). *See also CSXT Transp., Inc. & Delaware and*

Hudson Ry. Co., Inc.—Joint Use Agreement (“CSXT/D&H”), FD 35348, slip op. at 7 (STB served May 27, 2010); *Soo Line Corp.—Control—Cent. Me. & Quebec Ry. US Inc.*, (“Soo/CMQR”) FD 36368, slip op. at 1 (STB served Jan. 16, 2020).

As shown below, the proposed Transaction will clearly have no anticompetitive effects and therefore qualifies as a minor transaction under Section 1180.2(b) of the Board’s regulations. While CPKC intends to interchange interline traffic between itself and CSXT at Myrtlewood, MNBR will retain trackage rights over the Western Line, including exclusive rights to provide local service to existing customers at existing facilities, as well as to handle overhead traffic to and from Genesee & Wyoming Inc. (“G&W”) subsidiary, AGR.³ (A copy of the Retained Trackage Rights Agreement is included in Exhibit 2.) The Transaction includes no interchange commitments; MNBR will continue to have the right and ability to interchange directly with either Norfolk Southern (“NS”) or CPKC at Meridian and with CSXT and AGR at Myrtlewood. Accordingly, the Transaction will not reduce competitive rail alternatives for customers located on the Western Line or anywhere else.

The Transaction will, however, pave the way for CPKC to make the necessary investments in the Western Line to create an efficient Class I freight corridor with a direct interchange with CSXT at Myrtlewood that will expand shipping options for intermodal, automotive, and other traffic moving between the Southeastern United States and the Southwestern United States or Mexico. CPKC’s investments in track infrastructure will enable faster, more efficient, economical, and safe operations on the Western Line.

³ Because MNBR is retaining trackage rights and not acquiring them, no STB authority is required. *Minnesota Northern Railroad, Inc. —Exemption—Acquisition and Operation of Rail Line and Incidental Trackage Rights From Burlington Northern Railroad Co.*, Docket No. FD 33315, slip op. at 4 (STB served Aug. 14, 1997).

Under these circumstances, this Transaction is appropriately classified as a minor transaction consistent with prior Board classifications of minor transactions. *See, e.g., Norfolk S. Ry.—Acquisition & Operation—Certain Rail Lines of the Delaware & Hudson Ry. Co., Inc. (“NS/D&H”),* Docket No. FD 35873, slip op. at 2 (STB served Dec. 16, 2014) (finding end-to-end line sale to be a minor transaction); *Soo/CMQR*, FD 36368 (STB served Jan. 16, 2020) (finding end-to-end transaction minor “because it ‘clearly will not have any anticompetitive effects’ and that, if any such anticompetitive effects were found to exist, they would ‘clearly be outweighed by the [T]ransaction’s anticipated contribution to the public interest in meeting significant transportation needs’”); *CSXT/D&H*, FD 35348, slip op. at 7 (STB served May 27, 2010) (finding transaction to be minor where there did “not appear to be a likelihood of any anticompetitive effects” and where it did not appear “that any shipper would have fewer competitive rail alternatives”); *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC (“NS/Pan Am”),* FD 35147, slip op. at 9 (STB served June 26, 2008) (finding end-to-end transaction to be minor transaction, where it appeared that no shipper would have fewer competitive rail options).

Moreover, even if the Transaction were to result in some anticompetitive effects—it will not—such effects would clearly be outweighed by the Transaction’s anticipated contribution to the public interest in meeting significant rail transportation needs. In addition to its other benefits, CPKC’s acquisition and operation of the Western Line will create a direct Class I to Class I connection that will provide improvements in the efficient movement of existing and future intermodal, automotive, and other interline traffic between the Southeastern United States and the Southwestern United States and Mexico. Creation of this Class I freight corridor will expand

customer market reach, and by converting truck traffic to rail, reduce highway congestion. It will also benefit the environment by reducing fuel consumption.

Finally, the Transaction does not fall within any of the class exemptions set forth in 49 C.F.R. § 1180.2(d).

As the Transaction is not major, significant, or exempt, Applicants respectfully request the Board to find the Transaction to be a minor transaction under 49 C.F.R. § 1180.2(c).

II. STANDARD OF REVIEW

Congress has mandated that, in proceedings such as this one that do not involve the merger or control of at least two Class I rail carriers, the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

The Board must approve such a transaction unless it finds that it will cause “adverse competitive impacts that are both ‘likely’ and ‘substantial,’” and that those impacts outweigh the public benefits of the transaction and cannot be mitigated through Board-imposed conditions.⁴

The Board and its predecessor agency have long recognized that end-to-end transactions, such as this one, are not likely to raise competitive issues.⁵ Like other end-to-end transactions, this

⁴ *CNOTP/Trustees.*, FD 36699, slip op. at 3 (STB served Sep. 20, 2023); *NS/D&H*, FD 35873, slip op. at 14 (STB served May 15, 2015) (“*NS/D&H*”), *petition for rev. dismissed sub nom. Riffin v. STB*, No. 16-1043 (D.C. Cir. Mar. 31, 2017). Public interest factors are considered only where significant anticompetitive effects are found. *Can. Nat’l Ry.—Control—EJ&E W. Co.*, FD 35087, slip op. at 13 (STB served Dec. 24, 2008).

⁵ *E.g.*, *NS/Pan Am*, FD 35147, slip op. at 5 (STB served Mar. 10, 2009) (“This agency has long held that end-to-end transactions are unlikely to generate the types of competitive problems that often arise in parallel transactions.”); *see also id.* (finding that the end-to-end transaction would not adversely affect competition); *Norfolk S. Corp.—Control*

Transaction would clearly have no anticompetitive effects let alone any that are “likely” or “substantial.” This conclusion is reinforced by the fact that MNBR will continue to operate on the Western Line and will retain the exclusive right to provide local service to existing customers and rights to provide overhead service, without any restriction on interchange to connecting carriers. Thus, no shipper will lose a competitive option and no connecting railroad will be foreclosed from interchange. Customers will continue to enjoy the same service and options they enjoy today. In these circumstances, there are definitively no anticompetitive effects.

Further, as this Application will demonstrate, the Transaction will contribute to the public interest in meeting significant rail transportation needs, so that even if there were anticompetitive impacts – there are none – they would clearly be outweighed by the Transaction’s contribution to the public interest in meeting those needs.

Applicants request that the Board approve KCS’s acquisition and operation of the Western Line under the statutory standard set forth in 49 U.S.C. § 11324(d) and pursuant to the procedural schedule proposed below.

III. PROPOSED PROCEDURAL SCHEDULE

Pursuant to the requirements of 49 U.S.C. § 11325 and 49 C.F.R. § 1180.6(a)(1)(ii), Applicants respectfully request that the Board establish the following procedural schedule to govern the proceeding on their Application:

& Consolidation Exemption—Algers, W. & W. Ry., STB Finance Docket No. 34839, slip op. at 8 (STB served Feb. 15, 2007) (finding no “likelihood that a substantial lessening [sic] of competition” would result from the end-to-end transaction); *Huron & E. Ry.—Acquisition—CSXT Transp., Inc. Line Between Bad Axe & Saginaw, MI*, FD 31316, 1988 WL 225140, at *5 (ICC Dec. 16, 1988) (finding that the end-to-end transaction “w[ould] not result in the loss of, or any reduction in, competitive rail services”).

DATE	ACTION
1	Application filed with Board and served. Motion for Protective Order filed with Board.
30	Board notice of acceptance of the application and order establishing procedural schedule.
45	Notices of intent to participate in this process must be filed with the Board.
60	Comments due from all parties, including the including the Attorney General and Secretary of Transportation, on the transportation merits of the Proposed Transaction.
90	Responses to comments on the transportation merits of the Proposed Transaction, and Applicant's rebuttal in support of the Application due.
135	Briefs filed. Close of record.
180	Board serves final decision.
210	Board decision becomes effective.

The proposed procedural schedule would provide for service of a final decision by the statutory deadline prescribed by 49 U.S.C. § 11325(d)(2). Accordingly, Applicants respectfully request that the Board adopt the proposed procedural schedule..

In support of this Application, and pursuant to the Board's regulations at 49 C.F.R. Part 1180, Applicants submit the following information:

IV. APPLICATION INFORMATION

Section 1180.6 Supporting Information

(a)(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

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

Applicant KCS proposes to acquire from MNBR approximately 50.4± miles of rail line between Meridian, Mississippi and Myrtlewood, Alabama.

The Applicant involved in the Transaction and its business addresses is:

The Kansas City Southern Railway Company
427 West 12th Street
Kansas City, MO 64105-1403

Applicant CPKCL is the ultimate parent of KCS and its business address is:

Canadian Pacific Kansas City Limited
7550 Ogden Dale Road S.E.
Calgary, AB T2C 4X9
Canada

Questions and correspondence concerning this Application may be addressed to:

David F. Rifkind
Stinson LLP
1775 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006
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(ii) The proposed time schedule for consummation of the proposed transactions.

The parties intend to consummate the Transaction as soon as practicable after the Board's decision approving this Application becomes effective and upon satisfaction of all other conditions precedent to closing set forth in the draft Transaction Agreement attached as Exhibit 2.

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

As James Clements, Executive Vice-President of Strategic Planning & Technology for CPKC explains in his Verified Statement, CPKC seeks to acquire the Western Line from MNBR in order to create new Class I freight rail corridor that provides a shorter and more efficient CPKC-CSXT direct interline service route between CPKC-served markets in the Southwestern United States and Mexico and CSXT-served markets primarily in the Southeastern United States. Verified Statement (“V.S.”) of James Clements (“Clements”) at 3. CPKC seeks to establish a premium train service with a direct, efficient interchange with CSXT over Myrtlewood that will provide a new highly attractive option to intermodal, automotive and other shippers. *Id.*

As Jonathan Wahba, CPKC’s Senior Vice President Sales & Marketing, Bulk & Intermodal and James Clements explain in their verified statements, CPKC and CSXT’s current interline routes are more circuitous than a Myrtlewood routing and require that most traffic be interchanged via a third party intermediate carrier. The route for manifest traffic originating in Mexico destined for Atlanta, for example, moves north to Shreveport and then southeast to New Orleans where the New Orleans Public Belt Railway (“NOPB”) handles the traffic between CPKC and CSXT which then moves the traffic northeast to Atlanta. A direct CPKC-CSXT connection at Myrtlewood would give shippers a new option on CPKC to move the traffic due east from Shreveport via a route that is 158 miles shorter, avoids the need both to operate through New Orleans which is often congested and susceptible to seasonal weather outages, and to interchange with an intermediate carrier, thereby reducing handling events and dwell time. Similar efficiency and reliability gains would be realized as compared to CPKC – CSXT’s other existing manifest interline routes including over Brookwood, Alabama via the Alabama Southern Railroad and over East St. Louis, Illinois. A Myrtlewood routing is 104 miles shorter than a Brookwood routing between, for

example, Jackson, Mississippi and Atlanta. It is 255 miles shorter than between, for example, East St. Louis and Louisville, Kentucky. Jonathan Wahba (“Wahba”) V.S. at 4-5; Clements V.S. at 7-9.

As for automotive traffic moving between the Southeastern United States and Mexico, that traffic is handled by an intermediate bridge carrier between Laredo and CSXT interchanges at New Orleans, Memphis or East St. Louis. A direct CPKC-CSXT routing over Myrtlewood would give shippers an option that would yield similar efficiencies as the manifest traffic, avoiding both the need to interchange via an intermediate carrier and congested areas such as New Orleans, thereby reducing car handlings and dwell time. A direct CPKC-CSXT routing would give CPKC and CSXT control over the traffic between origin and destination, enabling them to deliver a reliable and consistent premium train service. Wahba V.S. at 5-6.

In addition to providing more efficient service for existing traffic, a premium Class I to Class I train service over Myrtlewood will provide a highly competitive option for intermodal and automotive traffic utilizing other carriers. It will also position CPKC to compete for the new traffic that will be generated by several new automotive plants that are planned to open in the Southeastern United States in the next few years. Wahba V.S. at 7-9.

Although KCS recently entered into a haulage arrangement with MNBR, such an arrangement is no substitute for a direct, efficient interchange between CPKC and CSXT. CPKC must be able to deliver a fast and reliable train service, i.e., a premium train service over Myrtlewood, in order for the majority of existing CPKC-CSXT interline shippers to opt for a Myrtlewood routing and to compete effectively for new traffic. Clements V.S. at 12-13.

In order to ensure efficient interchange, CPKC and CSXT would coordinate interchange to minimize dwell and would operate utilizing run-through power. This will enable the delivering

carrier's crew to spot the train on the interchange track at Myrtlewood and step off the train, and the receiving carrier's crew to step on, perform any required inspections and depart – an arrangement that is second only to the efficiency of a single-line move. CSXT crews may have to spot and pull AGR and MNBR traffic at Myrtlewood, but such traffic would be pre-blocked minimizing yard activity and dwell. Clements V.S. at 10; Raymond A. Elphick (“Elphick”) V.S. at 8-9.

CPKC's ownership of the Western Line is essential to unlocking CPKC's ability and willingness to make the type of investment necessary to support its operations of premium train service. Currently, the Western Line supports sustained maximum speeds of only 10 MPH. Due to the condition of the track, there is an elevated risk of track buckling on high heat days. Accordingly, MNBR operates at night when daytime temperatures exceed 95 degrees. Matthew O. Walsh (“Walsh”) V. S. at 3. There are 31 bridges on the Western Line, most of which are more than 85 years old and require considerable engineering work. This infrastructure will need to be improved to support a Class I premium train service. Clements V.S. at 13-14.

To ensure safe and efficient operations, in 2024, CPKC intends to invest approximately \$46 million to upgrade the infrastructure of the Western Line to Class I railroad standards.⁶ CPKC is planning an extensive track maintenance and rehabilitation program to improve track to support operations at a sustained maximum speed of 25 MPH. Track work will include installation of wayside detectors and safety devices. This will bring track conditions to Class I railroad standards and reduce the risk of buckling, bringing the Western Line's reliability in high heat to a standard consistent with the rest of CPKC's network operations. CPKC also plans to invest approximately

⁶ During the pendency of the proceeding, CPKC plans to perform engineering work on track that it owns in Meridian. This work is work that is not related to this Proposed Transaction and would be performed regardless of the outcome of this proceeding. Specifically, CPKC intends to reduce the curvature of the CPKC-owned rail line that connects to the MNBR in Meridian. The reduction in curvature will both increase safety and reduce CPKC's maintenance costs.

\$9 million in bridge repair and improvements. In addition to the year one bridge work, CPKC intends to embark on a multi-year bridge rehabilitation program, which it estimates will cost more than \$100 million. *Id.*; Elphick V.S. at 10. These substantial investments will benefit both CPKC's operations and MNBR's operations by increasing safety and efficiency for both carriers. Walsh V.S. at 3; Clements V.S. at 7-11.

The investment in the Western Line and the establishment of an efficient Class I to Class I interchange will elevate the Western Line from a lower density line to a competitive east-west rail corridor. A shorter, more efficient and reliable routing will put new markets within reach for shippers. Clements V.S. at 12.

Because MNBR will retain perpetual exclusive trackage rights on the Western Line to serve existing local customers and provide some overhead service and will not be restricted from interchanging with connecting railroads, no shipper will see a change in service or lose any option due to the Transaction. MNBR will also retain the use of infrastructure needed to support its operations. This includes MNBR's Meridian Yard and locomotive shop and the Naheola Yard. The improved track conditions should enable MNBR to provide more efficient service, promoting further growth and investment on the Western Line. Walsh V.S. at 4.

Although MNBR will have exclusive trackage rights with respect to certain traffic, CPKC will have the residual common carrier obligation on the Western Line and would be able to step in should MNBR unexpectedly be unable to meet its common carrier obligation subject to the terms and conditions of the Retained Trackage Rights Agreement. Clements V.S. at 5.

Integration of the Western Line into the CPKC system poses no operational risk. CPKC will be adding 50.4± miles to its extensive network and expects to operate just one train a day in each direction on the Western Line, at least for the first five years after consummating the

Transaction. CPKC has a track record of successfully integrating newly acquired rail lines including the Central Maine & Quebec and its current integration of the CP and KCS systems.

Here, CPKC has worked with both MNBR and CSXT to establish an operating plan that will ensure fluid, efficient, and safe operations. Moreover, because the routing will reduce the amount of traffic that CPKC currently interchanges with intermediate carriers—including with the MNBR at Meridian—and avoids areas such as New Orleans that are difficult to traverse and susceptible to seasonal weather disruptions, CPKC anticipates that the Transaction would reduce the number of work events and yard dwell time associated with existing CPKC-CSXT interline traffic. Thus, the integration of the Western Line could, in fact, reduce operational risks.

(iv) The nature and amount of any new securities or other financial arrangements.

No new securities will be issued in connection with the Transaction. The only relevant financial arrangement is the in-kind consideration paid by CPKC as provided in the Draft Transaction Agreement (See Section 1180.6(a)(2)(ii), below).

(a)(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

As James Clements explains, the Transaction will have no negative competitive impacts and there will be no lessening of competition, creation of a monopoly or restraint of trade. This conclusion is compelled by three key facts: First, the Transaction is end-to-end. CPKC connects to the Western Line at Meridian, Mississippi. From Meridian, CPKC's mainline runs north. Thus,

Meridian is CPKC's eastern most terminus in the region. The Western Line is neither parallel to, nor duplicative of, any rail line on the CPKC System that CPKC operates.⁷ Clements V.S. at 16.

Second, there are no two-to-one rail shippers. All local shippers will continue to be served by MNBR via trackage rights, and will continue to enjoy the same service options from the same carrier that they receive today. Walsh V.S. at 3. A key difference is that MNBR will provide that service over an upgraded line. Accordingly, "no shipper will have fewer rail options and...longstanding operations on the [Western] Line will continue unchanged" (*see CNOTP/Trustees*, FD 36699, slip op. at 4 (STB served Sep. 20, 2023)), except MNBR will be able to provide more efficient service over upgraded and safer rail facilities. Walsh V.S. at 3; Clements V.S. at 13.

Third, MNBR is free to interchange without restriction. Walsh V.S. at 3. On the Western Line, MNBR will continue to have the ability to interchange directly with NS at Meridian. At Myrtlewood, MNBR will be free to interchange directly with AGR and CSXT. Clements V.S. at 16. Thus, "the Transaction will not cause reduction in the competitive options available to shippers and ... no connecting railroad will be foreclosed from interchange." *CNOTP/Trustees*, FD 36699, slip op. at 4 (STB served Sep. 20, 2023).

Far from lessening competition, as described above in Section 1180.62(a)(iii), the Transaction enhances competition, particularly for intermodal and automotive traffic that moves between CPKC markets in the Southwestern United States and Mexico and CSXT markets in the Southeastern United States and beyond. Clements V.S. at 15-16; Wahba V.S. at 8-9.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, in any increase in traffic, revenues, earnings

⁷ CPKC owns a line between Artesia and Tuscaloosa that is operated by the Alabama Southern Railroad under a long term lease.

available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

Pursuant to the Transaction Agreement, the agreed upon value to MNBR of the property rights that KCS would acquire is {{[REDACTED]}}. As consideration, MNBR's parent, G&W would receive equivalent value in the form of rights with respect to two CPKC operating properties in Canada, a 43-mile line on CPKC's Hoadley Subdivision, south of Edmonton, and property in the Scotford Area in the Alberta Industrial Heartland, and other agreed consideration. The draft Transaction Agreement provides for G&W to receive additional compensation {{[REDACTED]}} No cash is involved in the Proposed Transaction, and accordingly, the Proposed Transaction does not involve any financing. See Clements V.S. at 5-6.

As described above in Section 1180.62(a)(iii), and in the Verified Statements of James Clements and Ray Elphick (the Operating Plan (Exhibit 15)), the Transaction will yield several economies to be effected in operations. Shorter routing of existing traffic results in reduced fuel consumption and operating costs. Reducing the number of carriers translates to fewer handling events which reduces operating costs as well as dwell.

CPKC intends to grow the volumes on the Western Line as it expects existing CPKC-CSXT shippers to opt for the more efficient direct routing traffic and as CPKC and CSXT win new traffic with the new premium train service. Increases in traffic will produce economies of density, increased revenue, increased earnings available for fixed charges, and net earnings.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

No CPKC entity will incur an increase in fixed charges (*i.e.*, interest and other financial charges) as a result of the Transaction.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

As described further in the Verified Statements of James Clements and of Matthew O. Walsh, G&W's Executive Vice President, Global Corporate Development, and above in Section 1180.6(a)(iii), the Transaction would preserve the pre-Transaction competitive status quo with respect to existing local traffic, improve the efficiency and reliability of CPKC–CSXT interline traffic, open new markets for shippers, and provide a new competitive transportation option for traffic moving between CPKC-served markets in the Southwestern United States and Mexico and CSXT-served markets in the Southeastern United States and beyond. Clements V.S. at 7-12. After consummation of the Transaction, MNBR would continue to provide the rail transportation services that it currently provides to local customers and would also handle certain overhead traffic, but would do so over improved track facilities thereby improving service reliability and safety. Walsh V.S. at 3. No diversion of traffic from other railroads or transportation modes is anticipated that might adversely affect essential rail services provided by other carriers.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

CPKC anticipates hiring twelve full time employees to support its operations on the Western Line. No current CPKC employee in the United States will be adversely affected by the proposed transaction. Elphick V.S. at 13.

Employees adversely affected by the Transaction will be entitled to the employee protective conditions and other procedures adopted in *New York Dock Ry.—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. § 11324.

Inclusion is not available as a form of relief in a minor transaction. Further, as there will be no anticompetitive effect and no adverse effects on the ability of any other carrier to provide essential services, there would be no basis for including another railroad in the Transaction.

(a)(3) Any other supporting or descriptive statements applicants deem material.

The Transaction enjoys strong support from a broad array of stakeholders including state and local political and business leaders in Alabama and Mississippi. These stakeholders recognize that the Proposed Transaction will generate investment in the Western Line which, in turn, will promote safe, reliable, and efficient movement of goods, and enhance economic development along the new Class I rail corridor. The support letters are attached to this Application as Appendix 5.

This Application is also supported by the Verified Statements of James Clements, Jonathan Wahba, Raymond A. Elphick and Matthew O. Walsh.

Mr. Clements, CPKC's Executive Vice-President of Strategic Planning & Technology, provides an overview of the Proposed Transaction and how it will impact local operations; describes the many public benefits of establishing a direct interchange with CSXT at Myrtlewood that will benefit shippers, competition, safety, and the environment; explains why the Proposed Transaction and CSXT's complementary transaction to retake possession of the Eastern Line are essential to establishing such a direct interchange, and explains why the Proposed Transaction will not harm competition, only strengthen it.

Mr. Wahba, CPKC's Senior Vice President Sales & Marketing, Bulk & Intermodal, describes the benefits of the Proposed Transaction from a commercial perspective, explains why CPKC expects certain existing traffic to switch to a Myrtlewood routing, how the Proposed

Transaction would enhance CPKC's ability to compete for new traffic, particularly, for intermodal and automotive traffic, and provides CPKC's forecasts of the traffic volumes expected to move via Myrtlewood post-consummation.

Mr. Elphick, CPKC's Vice President Service Design and Capacity Management, presents the Operating Plan required by 49 CFR § 1180.8(c). He describes our understanding of the current operations on the line between Meridian and Myrtlewood, the operating plan for MNBR and CPKC following consummation of the Proposed Transaction and identifies significant changes in operations, describes the investments that CPKC plans on making in order to support efficient and safe Class I operations, describes the operating economies that will be achieved by the Proposed Transaction, and addresses the passenger traffic on the line, anticipated abandonments and discontinuances, and the expected impact on labor.

Mr. Walsh, G&W's Executive Vice President, Global Corporate Development presents MNBR's support for the Board's expeditious approval of this and related proceedings, and explains the benefits of the MNBR transaction for MNBR and its customers.

(a)(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

An opinion of Applicants' counsel is provided in Appendix 1, stating that the Transaction meets the requirements of law and will be legally authorized and valid, if approved by the Board.

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

The Kansas City Southern Railway Company, a Missouri corporation, operates or possesses property rights in Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. The CPKC System also includes operations in

Michigan, Illinois, Indiana, Minnesota, North Dakota, South Dakota, Wisconsin, Maine, Vermont, Iowa, Missouri, and New York.

(a)(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

Exhibit 1 contains Map A showing the lines of the CPKC system and Map B showing the lines of MNBR in relation to other rail lines in the territory and the principal geographic points in the region traversed.

(a) (7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

CPKC seeks authority from the Board to acquire from MNBR and operate approximately 50.4± miles of rail line, as described in Section 1180.6(a)(1)(i) above. The consideration for the purchase of the Western Line is set forth in Section 1180.6(a)(2)(ii), above.

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

A redacted copy of the draft Transaction Agreement is provided in Exhibit 2 to the public version of the Application. An unredacted copy is being submitted under seal pursuant to the Protective Order served by the Board on September 29, 2023.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its

certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

Not applicable.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

The Transaction does not involve CPKC's property in the United States. The Transaction involves a portion of the property of non-applicant MNBR. A detailed description of the property involved in the acquisition from MNBR of the rail line for which CPKC is seeking acquisition and operating authority is listed in Section 1180.6(a)(1)(i) above, and in Section 1180.6(a)(7)(vi) below (concerning property in the United States).

(vi) Briefly describe the principal routes and terminal of lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

MNBR currently operates approximately 168 miles of single track mainline between Meridian, Mississippi and Montgomery, Alabama. MNBR owns the approximately 50.4± route miles of track between Meridian and Myrtlewood. MNBR leases from CSXT the land underlying its approximately 107-mile rail line between Myrtlewood and Burkville, Alabama. MNBR operates the approximately 10 miles between Burkville and Montgomery, Alabama via incidental overhead trackage rights over CSXT.

This Transaction involves the segment of MNBR's rail line that begins in the vicinity of Meridian at a point designated Milepost 0.0± and continues east to a point in the vicinity of Myrtlewood, Alabama designated as Milepost 50.4±, a distance of approximately 50.4± miles

together with all operating rail property owned by MNBR. The Western Line includes yards at Meridian, Naheola, and Myrtlewood and the following stations: Meridian, Whynot, Yantley, Cromwell, Jachin, Naheola, and Myrtlewood. MNBR will retain use of the Meridian Yard and locomotive shop and repair tracks therein, and of the Naheola Yard. There are no branch lines emanating from the Western Line.

At Meridian, MNBR interchanges with CPKC and NS. At Myrtlewood MNBR interchanges with AGR. On the Eastern Line, MNBR interchanges with NS at Selma, Alabama and CSXT at Montgomery. As a result of CSXT's Transaction, MNBR will interchange with AGR and CSXT at Myrtlewood.⁸

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the Transaction.

(b)(8) Environmental data. Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Office of Environmental Analysis for the proper format of the environmental report.

See Exhibit 4.

1180.8. Operational Data

(c) For minor transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:

(1) Traffic level density on lines proposed for joint operations.

⁸ Contemporaneous with the filing of this Application, AGR is filing a Notice of Exemption to acquire trackage rights on CPKC for purposes of interchanging at Myrtlewood with CSXT and MNBR, and CSXT is filing a Notice of Exemption to acquire trackage rights for purposes of interchanging at Myrtlewood with AGR and MNBR. See *Alabama & Gulf Coast Railway, LLC—Trackage Rights Exemption—The Kansas City Southern Railway Company d/b/a Canadian Pacific Kansas City*; Docket No. FD 36730, *CSX Transportation, Inc.—Trackage Rights Exemption—Kansas City Southern Railway Company*.

- (2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.***
- (3) Operating economies, which include, but are not limited to, estimated savings.***
- (4) Any anticipated discontinuances or abandonments.***

See the attached Verified Statement of Ray Elphick (Exhibit 15).

1180.11 Transnational and other informational requirements

(a) For applicants whose systems include operations in Canada or Mexico, applicants must explain how cooperation with the Federal Railroad Administration would be maintained to address potential impacts on operations within the United States of operations or events elsewhere on their systems.

The family of CPKC operating railroad companies include, in Canada, the Canadian Pacific Railway Company (“CPRC”). In Mexico, it includes the Kansas City Southern de México, S.A. de C.V. In the United States, it includes two Class I railroads, the Soo Line Railroad Company and The Kansas City Southern Railway Company. It also includes four Class II railroads, the Dakota, Minnesota & Eastern Railroad Corporation, the Delaware and Hudson Railway Company, Inc., the Central Maine & Quebec Railway US Inc., and The Texas Mexican Railway Company. The U.S. railroad companies operate approximately 8,600 miles of track in the United States which connect with the approximately 7,700 miles that CPRC operates in Canada and the approximately 3,800 miles that KCSM operates in Mexico. The United States operating companies cooperate with the Federal Railroad Administration (“FRA”) on a wide variety of safety issues at both a local level through local operating personnel and at a national level through appropriate headquarters personnel. Cooperation with the FRA to address potential impacts on the Western Line or on MNBR’s operations of operations or events that occur on CPKC’s Canadian system and on its Mexican system will be maintained consistent with current handling of these issues for existing CPKC operating railroad companies in the United States.

(b) All applicants must assess whether any restrictions or preferences under foreign or domestic law or policies could affect their commercial decisions, and discuss any ownership restrictions applicable to them.

None.

CONCLUSION

Applicants respectfully request that the Board accept the Application, determine that the Transaction described in it is a minor transaction, and grant this Application in its entirety.

Dated: October 6, 2023

Respectfully submitted,

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*Counsel for Canadian Pacific Kansas City Limited and
The Kansas City Southern Railway
Company d/b/a CPKC*

SIGNATURE OF APPLICANTS' OFFICER**49 C.F.R. § 1180.4(C)(2)(i)**

I, Justin Meyer, hereby declare under penalty of perjury of the United States of America that I am the Senior Vice-President Engineering and Mechanical for Canadian Pacific Kansas City Limited ("CPKCL") and Senior Vice-President Engineering, Mechanical and Procurement for The Kansas City Southern Railway Company ("KCS"). I am duly authorized to verify and file this application on behalf of CPKCL and KCS. The statements in this Application are true and correct to the best of my knowledge and belief.

Dated this 6th day of October 2023

A handwritten signature in black ink, appearing to read "Justin D. Meyer", is written above a horizontal line.

Justin Meyer
Senior Vice-President Engineering
and Mechanical for CPKCL and
Senior Vice-President Engineering,
Mechanical and Procurement for KCS

CERTIFICATE OF ASSISTANT SECRETARY**49 C.F.R. § 1180.4(C)(2)(i)**

I, Nizam Hasham, in my capacity as the Assistant Corporate Secretary of Canadian Pacific Kansas City Limited (“CPKCL”) and Secretary of The Kansas City Southern Railway Company (“KCS”), and not in an individual capacity and without personal liability, and having knowledge of the matters herein contained, hereby certify that as of the date hereof, Justin Meyer holds the titles of Senior Vice-President Engineering and Mechanical for CPKCL and Senior Vice-President Engineering, Mechanical and Procurement for KCS, and as such is authorized under each of said company’s approval and execution authorities to execute and deliver in the name and behalf of said companies the Application appended hereto.

Dated October 5, 2023.



Nizam Hasham

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2023, the foregoing Application in Docket No. FD 36732, including all exhibits, appendices, and attachments thereto, were served upon the following by first-class mail in accordance with 49 C.F.R. § 1180.4(c)(5): the Secretary of the United States Department of Transportation (c/o the Federal Railroad Administration); the Attorney General of the United States; the Federal Trade Commission; and the Governors, Public Service Commissions, and Departments of Transportation of the States of Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, Michigan, Illinois, Indiana, Minnesota, North Dakota, South Dakota, Wisconsin, Maine, Vermont, Iowa, Missouri, and New York.

/s/ Kelsey L. Robinson

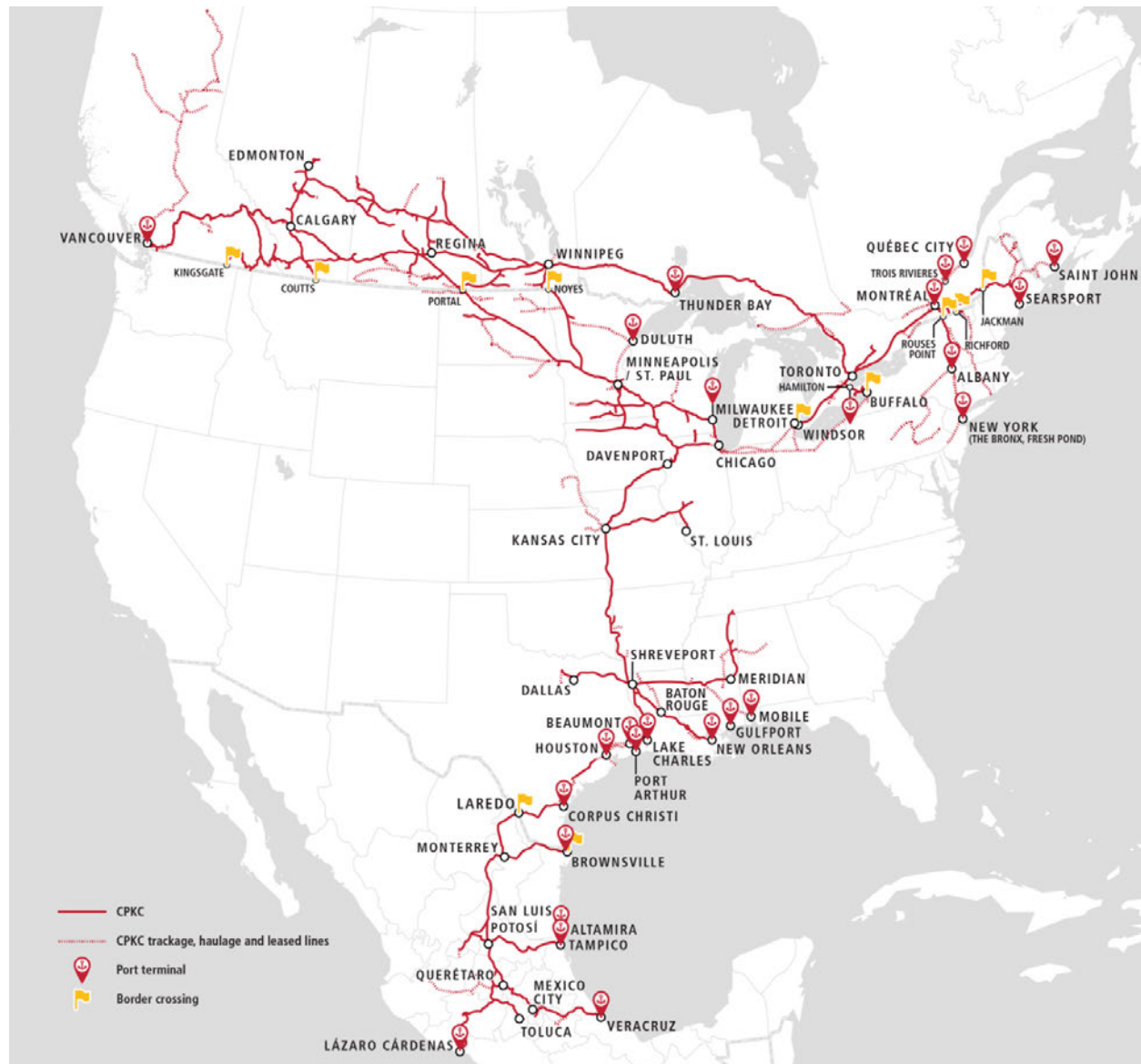
Kelsey L. Robinson

EXHIBIT 1

MAPS

MAP A

CPKC SYSTEM MAP



MAP B

MNBR SYSTEM MAP

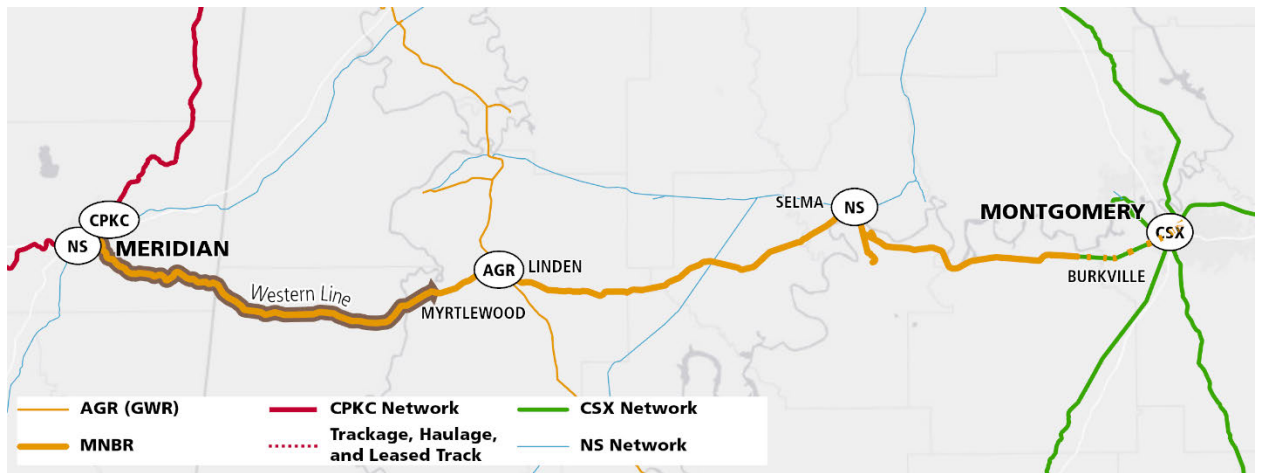


EXHIBIT 2

DRAFT TRANSACTION AGREEMENT

AND

RETAINED TRACKAGE RIGHTS

AGREEMENT

TRANSACTION AGREEMENT¹

dated as of [●], 2023

between

GENESEE & WYOMING INC.

GENESEE & WYOMING CANADA INC.
(solely for purposes of Section 15.02(b) hereof)

and

CANADIAN PACIFIC RAILWAY COMPANY

d/b/a CANADIAN PACIFIC KANSAS CITY

¹ NTD: Agreement subject to further review by CPKC and G&W, including tax.

TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS.....	2
1.01 Defined Terms	2
1.02 Other Definitional Provisions	24
II. SALE AND PURCHASE OF MNBR TRANSFERRED ASSETS.	25
2.01 Sale and Purchase of MNBR Transferred Assets	25
2.02 Excluded Assets	26
2.03 MNBR Assumed Obligations	26
2.04 [Exchange / Valuation.....	31
2.05 [Allocation of Value	31
2.06 Retained Rights.....	32
III. SALE AND PURCHASE OF CANADIAN TRANSFERRED ASSETS.....	32
3.01 Sale and Purchase of Canadian Transferred Assets	32
3.02 Excluded Assets	34
3.03 Canadian Transferred Assets Assumed Obligations.....	34
3.04 Exchange/Valuation.....	39
3.05 [Allocation of Value	39
3.06 Withholding	39
3.07 Option to Purchase Scotford Assets.....	40
3.08 Scotford Easement Agreement	41
3.09 Plot 21 Easement Agreement.....	42
3.10 Plot 6 Right of First Refusal	42
3.11 CPKC Right of First Refusal	42
IV. ADJUSTMENTS AND PRORATIONS	43
4.01 Items Subject to Adjustment.....	43
V. CLOSING	45
5.01 Closing	45
5.02 Deliveries by G&W	46
5.03 Deliveries by CPKC.....	48
5.04 Consents; Cooperation.....	50
5.05 Canadian Real Property Closing Procedure.....	51

VI.	ACCESS TO INFORMATION; CERTAIN RESTRICTIONS	52
6.01	Parties' Investigation	52
6.02	Confidentiality of Information.....	53
6.03	Post-Signing Due Diligence and Right to Terminate	53
VII.	ADDITIONAL UNDERTAKINGS AND AGREEMENTS.....	59
7.01	Removal of Excluded Assets by G&W; Proprietary Locks; Emergency Information	59
7.02	Removal of Excluded Assets by CPKC; Proprietary Locks; Emergency Information	60
7.03	Post-Closing Access to Certain Records.....	62
7.04	WARN Act.....	63
7.05	No Obligation to Hire Employees.....	63
7.06	Labor Protection.....	63
7.07	Condition of Property.	64
7.08	Trademarks and Logos.....	66
7.09	Notification of Certain Matters; Cooperation	67
7.10	[Intentionally Omitted]	69
7.11	Overlap Contracts	69
7.12	Maintenance of Rail Line.....	70
7.13	No Solicitation	70
7.14	Second Train	71
7.15	Tax Reimbursement	72
VIII.	G&W'S REPRESENTATIONS AND WARRANTIES.....	72
8.01	Organization and Authority	73
8.02	No Conflicts; Consents of Third Parties	74
8.03	Licenses and Permits.....	75
8.04	Title to MNBR Transferred Assets	76
8.05	Employment and Employee Benefit Matters	77
8.06	Litigation.....	78
8.07	Compliance with Law	79
8.08	Absence of Certain Changes	79
8.09	List of Agreements.....	80
8.10	Status of Agreements	81
8.11	Taxes and Assessments.....	82
8.12	Hazardous Materials	82

8.13	MNBR Real Property.....	84
8.14	Undisclosed Liabilities.....	84
IX.	CPKC'S REPRESENTATIONS AND WARRANTIES	84
9.01	Organization and Authority	85
9.02	No Conflicts; Consents of Third Parties	87
9.03	Licenses and Permits.....	88
9.04	Title to Hoadley Subdivision Assets.....	88
9.05	Title to Scotford Assets.....	89
9.06	Employment and Employee Benefit Matters	90
9.07	Litigation.....	92
9.08	Compliance with Law	92
9.09	Absence of Certain Changes	93
9.10	List of Agreements.....	93
9.11	Status of Agreements	94
9.12	Taxes and Assessments.....	95
9.13	Hazardous Materials	95
9.14	Canadian Real Property	97
9.15	Undisclosed Liabilities.....	97
9.16	Competition Act Threshold.....	97
9.17	No Filings under section 104 of the Canada Transportation Act.....	98
X.	G&W'S PRECLOSING COVENANTS	98
10.01	Negative Covenants	98
10.02	Affirmative Covenants.....	99
XI.	CPKC's PRECLOSING COVENANTS	100
11.01	Negative Covenants	100
11.02	Affirmative Covenants.....	102
XII.	CONDITIONS PRECEDENT TO CPKC'S OBLIGATION TO CLOSE.....	102
12.01	Representations and Warranties.....	102
12.02	STB Conditions.....	103
12.03	Railway Operating Approvals.....	103
12.04	Documents at Closing.....	103
12.05	No Governmental Action or Legal Proceedings	104
12.06	Contractual Consents	104
12.07	Other Actions	104

12.08	CSXT.....	105
XIII.	CONDITIONS PRECEDENT TO G&W'S OBLIGATION TO CLOSE	105
13.01	Representations and Warranties.....	105
13.02	STB Conditions.....	106
13.03	Railway Operating Approvals.....	106
13.04	Documents at Closing.....	106
13.05	No Governmental Action or Legal Proceedings.....	106
13.06	Foreign Ownership.....	Error! Bookmark not defined.
13.07	Other Agreements	107
13.08	CSXT	107
XIV.	RISK OF LOSS; DEFAULT; TERMINATION	107
14.01	Risk of Loss	107
14.02	Termination by G&W	108
14.03	Termination By CPKC.....	109
14.04	Failure of STB to Approve	110
14.05	Mutual Agreement	110
14.06	Effect of Termination.....	110
XV.	SURVIVAL; INDEMNIFICATION	110
15.01	Survival of Warranties and Covenants; Limitations.....	110
15.02	Indemnification by G&W	113
15.03	Indemnification by CPKC.....	114
15.04	Conditions of Indemnification	115
15.05	Other Indemnity Matters.....	122
XVI.	MISCELLANEOUS	122
16.01	Consents and Filings.....	122
16.02	Additional Actions and Documents	124
16.03	Brokers.....	124
16.04	Expenses	124
16.05	Waiver.....	126
16.06	Successors and Assigns.....	126
16.07	Assignment	126
16.08	Notices	126
16.09	Announcements.....	127
16.10	Entire Agreement.....	128

16.11	Headings	128
16.12	Conflicting Terms	128
16.13	Limitation on Benefits	128
16.14	Severability	129
16.15	Execution	129
16.16	Governing Law; Jurisdiction.....	130
16.17	Specific Performance	131

TRANSACTION AGREEMENT

TRANSACTION AGREEMENT, dated as of the [●] day of [●], 2023, by and among CANADIAN PACIFIC RAILWAY COMPANY, a [●] corporation, d/b/a CANADIAN PACIFIC KANSAS CITY ("**CPKC**"), GENESEE & WYOMING INC., a Delaware corporation ("**G&W**") and, solely for purposes of Section 15.02(b) hereof, GENESEE & WYOMING CANADA INC., a federal corporation organized under the laws of Canada ("**G&W Canada Holdco**").

R E C I T A L S:

A. G&W's subsidiary, MNBR, owns, controls, operates or uses certain railroad properties, rights and facilities relating to, and has the common carrier authority to operate, a rail line between Meridian, MS and Myrtlewood, AL, beginning with M.P. 0.0 and ending with M.P. 50.4 (based on the current MNBR timetable), all as more specifically shown on the map and set forth in the description attached as **Exhibit [●]**. The foregoing shall for purposes of this Agreement be referred to as the "**Rail Line**".

B. Subject to the terms and conditions of this Agreement, G&W desires to cause MNBR to sell and CPKC desires to cause its subsidiary, KCS, to purchase MNBR's interest in the Rail Line less the retained trackage rights described herein.

C. CPKC's subsidiary, CPRC, owns, controls, operates or uses certain railroad properties, rights and facilities relating to the operating line of railroad known as the Hoadley Subdivision located between Jackson, Alberta (M.P. 0.0) and Homeglen, Alberta (M.P. 42.8), all as more specifically shown on the map and set forth in the description attached as **Exhibit [●]**. The foregoing shall for purposes of this Agreement be referred to as the "**Hoadley Subdivision**".

D. CPKC's subsidiary, CPRC, owns those lands and premises located in Strathcona County, Alberta, as more specifically shown on the map and set forth in the description attached

as **Exhibit [●]**. The foregoing shall for purposes of this Agreement be referred to as the "**Scotford Lands**".

E. Subject to the terms and conditions of this Agreement, CPKC desires to cause CPRC to sell and G&W desires to cause its subsidiary, Hoadley Newco, to purchase CPRC's interest in the Hoadley Subdivision and, if G&W exercises the Option within the Option Period, to cause its subsidiary, **[AIH Land Newco]**, to purchase CPRC's interest in the Scotford Transferred Lands (as hereinafter defined), all in partial consideration for the acquisition of MNBR's interest in the Rail Line as described herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto hereby agree as follows:

I. **DEFINITIONS**

1.01 **Defined Terms.** As used herein, the following terms shall have the meanings specified in this Section 1.01 as follows:

"Affiliates" -- Means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to "**control**" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term "**controlled**" shall have a similar meaning.

"AGR" -- Means Alabama & Gulf Coast Railway LLC, a Delaware limited liability company.

"Agreement" -- Means this Transaction Agreement as the same may be amended or supplemented in accordance with the terms hereof.

"AIH" -- Means the Industrial Heartland Designated Industrial Zone located in the Province of Alberta, Canada, as shown on the map attached hereto as **Exhibit [●]**.

["AIH Land Newco" -- Means [a newly formed Alberta limited liability company owned directly or indirectly by G&W that G&W intends to use to acquire the Scotford Assets if it exercises the Option].]

["AIH Newco"] -- Means [a newly formed Alberta limited liability company owned directly or indirectly by G&W that G&W intends to use to enter into the AIH Operating Rights & Interchange Agreement].

"AIH Operating Rights and Interchange Agreement" -- Means the operating rights and interchange agreement in substantially the form attached hereto as **Exhibit [●]**.

"Alternative Proposal" -- Means, with respect to G&W, any disposition of all or a material part of the MNBR Transferred Assets, and with respect to CPKC, any disposition of all or a material part of the Canadian Transferred Assets.

"Amended Interchange Agreement – KCS / MNBR" -- Means an amendment to the Existing Interchange Agreement – KCS / MNBR in the form attached here to as **Exhibit [●]**.

"Assignment and Assumption Agreement" -- Means the Assignment and Assumption Agreement between KCS and MNBR in the form attached hereto as **Exhibit [●]**.

"Assumed Contracts" -- Means Immaterial Contracts, Overlap Contracts to the extent related to the MNBR Transferred Assets or Canadian Transferred Assets as applicable, Facilities Services Agreements and other Contracts, in each case, to the extent included in the MNBR Transferred Assets and set forth on **Schedule [●]** or the Canadian Transferred Assets and set forth on **Schedule [●]**, as the case may be.

"Best Efforts" -- Means, as to any party, such party's reasonable best efforts in accordance with reasonable commercial practice to perform or satisfy an obligation or duty or otherwise act in a manner calculated to obtain the intended result by action or expenditure not disproportionate or burdensome in the circumstances, which means, among other things, that such party shall not be required to (i) expend funds other than for relevant filings or other governmental fees and the payment of the reasonable and customary costs and expenses of employees, counsel, consultants, representatives and agents as a condition to achieving a satisfactory result in connection with the performance or satisfaction of such obligation or duty or other action (provided that the foregoing shall not require a party to institute litigation or arbitration as a part of its Best Efforts) or (ii) suffer any economic or commercial disadvantage or detriment as a condition to achieving a satisfactory result out of reasonable proportion to the benefits to the parties under this Agreement.

"Bill of Sale" -- Means the bill of sale in the form of Exhibit [●] hereto.

"Business Day" -- Means any day of the year, other than a Saturday, Sunday or day on which banks are closed for business in New York, New York, Chicago, Illinois or Calgary, Alberta.

"CAGY" -- Means Columbus and Greenville Railway Company.

"CAGY Payment Reduction" -- As defined in Section 3.07(d).

"Canadian Permitted Encumbrances" -- Means Encumbrances generally applicable to the sale of railway assets, including (i) zoning, entitlement, building and other land use regulations or codes imposed by Governmental Authorities; (ii) reservations, qualifications and exceptions in the original grant of title from the Crown; (iii) covenants, conditions, restrictions, easements, encroachments, servitudes, rights-of-way, and other matters or encumbrances of record affecting title to the Canadian Transferred Assets, including, without limitation, any matters or exceptions that would be disclosed by current title commitments, title reports, title searches, other comparable

land record searches and/or current surveys, other than mortgages, deeds of trust, hypothecs and security interests affecting title to the Canadian Transferred Assets; and (iv) liens for Taxes, assessments (including special assessments), levies, fees and other governmental charges not yet due or which, if due and unpaid, are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP.

"Canadian Real Property" -- Means the real property (including Canadian Real Property Interests) on or that constitutes the Canadian Transferred Assets.

"Canadian Real Property Conveyance Documents" -- As defined in Section 5.05(a).

"Canadian Real Property Defect of Title" -- As defined in Section 6.03(e)

"Canadian Real Property Interests" -- Means leases, easements, licenses, Permits, rights-of-way, and all other interests in the Canadian Real Property other than fee simple title.

"Canadian Real Property Leases" -- As defined in Section 9.13(a).

"Canadian Transferred Assets" -- As defined in Section 3.01(a).

"Canadian Transferred Assets Assumed Obligations" -- As defined in Section 3.03.

"Canadian Transferred Assets Excluded Obligations" -- As defined in Section 3.03(b).

"Cap" -- As defined in Section 15.01(c).

"Claims" -- As defined in Section 15.02(a).

"Closing" -- As defined in Section 5.01.

"Closing Date" -- As defined in Section 5.01.

"Code" -- Means the Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" -- Means the Confidentiality Agreement effective May 9, 2023 between CPKC and G&W.

"Contracts" -- Means contracts, agreements, easements, franchises, rights-of-way, licenses, leases, commitments, and understandings (excluding Shipper Contracts and car hire agreements).

"CPKC" -- Means Canadian Pacific Railway Company.

"CPKC Accounting Firm" -- As defined in Section 3.05.

"CPKC Allocation" -- As defined in Section 3.05.

"CPKC Entity" -- Means CPKC, CPRC, KCS and [●].

"CPKC's Fundamental Representations and Warranties" -- Means the representations and warranties of CPKC set out in Section 9.01 (Organization and Authority), Section 9.04 (Title to Hoadley Subdivision Assets) and, if applicable, Section 9.05 (Title to Scotford Assets).

"CPKC Indemnified Parties" -- As defined in Section 15.02(a).

"CPKC Labor Protection" -- Means any and all costs, expenses, payments and notifications related to employee benefits, bonuses, allowances, and arbitration, administrative and litigation expenses, arising out of any agreement with, or claims or grievances made, or lawsuits brought, by or on behalf of employees of CPKC or their collective bargaining representatives, in each case pursuant to protection, if any, imposed by Law or Contract as a result of the transactions contemplated by this Agreement.

"CPKC Material Adverse Effect" -- Means any event, condition, change, occurrence or effect that, individually or in the aggregate with other events, conditions, changes, occurrences or effects, (1) has had, or would reasonably be expected to have a material adverse effect on the ownership, use or operation by G&W of the Canadian Transferred Assets in substantially the same manner as the Canadian Transferred Assets are owned, used or operated by CPKC prior to the Closing; provided, however, except that, for purposes of this clause (1), in no event shall any event, condition, change, occurrence or effect arising from or related to the following be deemed

to be or constitute a CPKC Material Adverse Effect: (i) any failure to meet projections and forecasts (but not the underlying cause thereof), (ii) the negotiation, execution or announcement of this Agreement and its pendency, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with CPKC, (iii) compliance with or the taking of action required by this Agreement, (iv) any change or absence of anticipated change in (A) applicable Law or the enforcement, implementation or interpretation thereof, or (B) GAAP or other accounting requirements or principles or the implementation or interpretation thereof, (v) national or international political or social conditions, such as (A) the commencement, continuation or escalation of war (in each case, whether or not declared), (B) calamities, (C) pandemics, (D) government sanctions, or (C) acts of terrorism or (vi) changes, events or occurrences arising after the date hereof from general business conditions or affecting the rail industry generally (but not if such changes, events or occurrences have a disproportionate effect on the Canadian Transferred Assets relative to the rail industry generally) or weather conditions which affect shipping revenues on the Canadian Transferred Assets or (2) would reasonably be expected to prevent or materially delay the performance by CPKC of its obligations under this Agreement or consummation of the transactions contemplated hereby.

"CPKC's Objection Notice" -- As defined in Section 6.03(a).

"CPKC Plan" -- Means any employee pension benefit plan (as defined in Section 3(2) of ERISA) maintained or contributed to by CPKC or any ERISA Affiliate of CPKC and insured by the Pension Benefit Guaranty Corporation under Title IV of ERISA.

"CPKC Response Deadline" -- As defined in Section 6.03(e).

"CPKC's Response Notice"-- As defined in Section 6.03(e).

"CPKC Right of First Refusal" -- Means the right of first refusal agreement between: (i) Hoadley Newco and CPKC with respect to the Canadian Transferred Assets relating to the Hoadley Subdivision; and (ii) **[AIH Land Newco]** and CPKC with respect to the Canadian Transferred Assets relating to the Scotford Transferred Lands (if the Option is exercised in accordance with the terms of this Agreement), each to be in the form of **Exhibit [●]** hereto.

"CPKC Trademark and Logos" -- As defined in Section 7.08(c).

"CPRC" -- Means Canadian Pacific Railway Company, a Canadian corporation.

"CSXT" -- Means CSX Transportation, Inc., a Virginia corporation.

"CSXT Regulatory Approvals" -- Means the STB authority obtained by CSXT as necessary and otherwise accomplishes (i) unless previously revoked or discontinued, revocation of CSXT's trackage rights authority (STB Finance Docket No. 32962) on MNBR between Meridian, MS and Myrtlewood, AL and (ii) any CSXT Relevant Transactions for which STB authority is required to be obtained by CSXT.

"CSXT Relevant Transactions" -- Means CSXT: (a) entering into the following written agreements: (i) with KCS for interchange at or near Myrtlewood, AL; (ii) with KCS granting CSXT operating rights on a portion of the MNBR Transferred Assets for purposes of interchange with MNBR, AGR and KCS at a mutually agreed upon location; (iii) with AGR granting AGR trackage and operating rights between Linden, AL and Myrtlewood, AL for purposes of [accessing the Rail Line to] interchang[ing][e] AGR traffic with CSXT, CPKC and MNBR; and (b) closing on the purchase of the track infrastructure assets on the MNBR rail line that operates over real property leased from CSXT, expiration of said lease, and commencement of operations over such rail line.

"Deductible" -- As defined in Section 15.01(b).

"Deed" -- Means one or more quit claim deeds in the form of **Exhibit [●]** hereto.

"Disclosed Environmental Conditions" -- Means surface and subsurface environmental conditions affecting portions of the MNBR Real Property as described, and more specifically disclosed in the reports and other documents listed, on **Schedules 8.12(a)** and **9.12(a)**.

"Dispute Notice" -- As defined in Section 4.01(b).

"Drop Dead Date" -- Means the first anniversary of the date hereof; provided, however, if all conditions (other than the conditions which by their nature are to be satisfied or waived at the Closing and subject to such satisfaction or waiver at the Closing) to each party's obligations under Articles XII and XIII have been satisfied or waived as provided therein as of such date other than the receipt of STB Approval, the term "**Drop Dead Date**" shall mean the date that is eighteen months after the date hereof, which period shall be extended while any STB Order is stayed or enjoined pursuant to Section 12.05.

"EBITDA" -- Means, for any period, net income, as defined by GAAP, plus interest, taxes, depreciation and amortization.

"Encumbrances" -- Means any mortgage, pledge, lien, option, claim, security interest, agreement, easement, equitable interest, restriction, license, lease, right of reverter, right of entry, encumbrance or charge.

"Environmental Laws" -- Means any existing or future Laws relating to (i) the injury to, or the pollution (or the cleanup thereof) or protection and preservation of, animal, plant and fish health or the environment (including any surface or subsurface physical medium or natural resource such as air, land, soil, surface waters, ground waters, stream and river sediments, and biota), (ii) the presence, exposure, use, manufacture, generation, containment, storage, treatment, disposal, discharge, processing, transportation, handling, release, management, emission,

remediation, recycling, or reuse of, or any other activity, incident, event or occurrence involving any harmful or deleterious substances, including Hazardous Substances, (iii) impacts on human health and safety resulting from any of the foregoing, or (iv) otherwise imposing liability or standards of conduct concerning the foregoing, including with respect to monitoring, record-keeping, notification, disclosure and reporting and all Permits issued or required to be issued pursuant to such laws and legal requirements. The term "**Environmental Laws**" includes, without limitation, where applicable, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 330f et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., the *Canadian Environmental Protection Act, 1999* and the *Environmental Protection and Enhancement Act (Alberta)*.

"Environmental Liabilities" -- Means Claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities, obligations, Encumbrances, liens, violations, costs and expenses (including attorneys' fees) of investigation, prosecutions, cleanup, response of Governmental Authorities, removal, remediation, clean-up, corrective action, natural resources damages, property damages, personal injuries, monitoring, penalties, contribution, indemnification, or defense of any matter (i) arising under any Environmental Laws (whether at law or in equity, and whether as a result of actual or alleged noncompliance) or the term or condition of any Permit required under or issued or authorized by or made pursuant to Environmental Laws, or (ii) in any way relating to the presence, exposure, use, manufacture, generation, containment, storage, treatment, disposal, discharge, processing, transportation, handling, release, management, emission, remediation, recycling or reuse of, or any other activity

involving any harmful or deleterious substances, including Hazardous Substances, or (iii) impacts on human health and safety resulting from any of the foregoing, of whatever kind or nature by any party, entity, or authority, whether or not resulting from the violation or actual or alleged noncompliance with any Environmental Laws.

"ERISA" -- Means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations issued thereunder.

"ERISA Affiliate" -- Means any subsidiary or any trade or business (whether or not incorporated) under common control (as defined in Section 4001(b)(1) of ERISA) with the party in question.

"Excluded Assets" -- Means all assets set forth on Exhibit [●].

"Existing Interchange Agreement -- KCS / MNBR" -- Means the interchange agreement dated July 1, 2022 between KCS and MNBR.

"Existing Scotford Right-of-Way Lands" -- Means the lands owned by CPKC in fee simple comprising the existing right-of-way that connects Plot 6 to the northwestern property boundary of Plot 21 (but excluding any portion of the lands comprising Plot 21) as more specifically shown on the map and set forth in the description attached hereto as Exhibit [●].

"Facilities Services Agreements" -- Means miscellaneous facilities services agreement for cleaning, lawn care, pest control, and other facilities services.

"Final Statement" -- As defined in Section 4.01(b).

"FOL Regulations" -- Means Foreign Ownership of Land Regulations (Alberta).

"FRA" -- Means Federal Railroad Administration.

"GAAP" -- Means United States generally accepted accounting principles.

"G&W" -- Means Genesee & Wyoming Inc., a Delaware corporation.

"G&W Canada Holdco" – Means Genesee & Wyoming Canada Inc., a federal corporation organized under the laws of Canada, which is solely a party hereto for purposes of Section 15.02(b) of this Agreement.

"G&W Canadian Co." -- Means one or more of the Hoadley Newco, the **[AIH Newco]**, or the **[AIH Land Newco]**, as the context may require.

"G&W Entities" -- Means G&W, MNBR, AGR, Hoadley Newco, **[AIH Newco]** and **[AIH Land Newco]**.

"G&W's Fundamental Representations and Warranties" -- Means the representations and warranties of G&W set out in Sections 8.01 (Organization and Authority) and 8.04 (Title to MNBR Transferred Assets).

"G&W Indemnified Parties" -- As defined in Section 15.03.

"G&W Labor Protection" -- Means any and all costs, expenses and payments related to employee benefits, bonuses, allowances, and arbitration, administrative and litigation expenses, arising out of any agreement with, or claims or grievances made, or lawsuits brought, by or on behalf of employees of any G&W Entity or their collective bargaining representatives, in each case pursuant to protection, if any, imposed by the STB as a result of the transactions contemplated by this Agreement.

"G&W Material Adverse Effect" -- Means any event, condition, change, occurrence or effect that, individually or in the aggregate with other events, conditions, changes, occurrences or effects, (1) has had, or would reasonably be expected to have a material adverse effect on the ownership, use or operation by CPKC of the MNBR Transferred Assets in substantially the same manner as the MNBR Transferred Assets are owned, used or operated by MNBR prior to the Closing; provided, however, except that, for purposes of this clause (1), in no event shall any

event, condition, change, occurrence or effect arising from or related to the following be deemed to be or constitute a G&W Material Adverse Effect: (i) any failure to meet projections and forecasts (but not the underlying cause thereof), (ii) the negotiation, execution or announcement of this Agreement and its pendency, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with G&W, (iii) compliance with or the taking of action required by this Agreement, (iv) any change or absence of anticipated change in (A) applicable Law or the enforcement, implementation or interpretation thereof, or (B) GAAP or other accounting requirements or principles or the implementation or interpretation thereof, (v) national or international political or social conditions, such as (A) the commencement, continuation or escalation of war (in each case, whether or not declared), (B) calamities, (C) pandemics, (D) government sanctions, or (C) acts of terrorism or (vi) changes, events or occurrences arising after the date hereof from general business conditions or affecting the rail industry generally (but not if such changes, events or occurrences have a disproportionate effect on MNBR or the MNBR Transferred Assets relative to the rail industry generally) or weather conditions which affect shipping revenues on the MNBR Transferred Assets or (2) would reasonably be expected to prevent or materially delay the performance by G&W of its obligations under this Agreement or consummation of the transactions contemplated hereby.

"G&W's Objection Notice" -- As defined in Section 6.03(e).

"G&W Response Deadline" -- As defined in Section 6.03(a).

"G&W's Response Notice" -- As defined in Section 6.03(a).

"G&W Plan" -- Means any employee pension benefit plan (as defined in Section 3(2) of ERISA) maintained or contributed to by G&W or any ERISA Affiliate of G&W and insured by the Pension Benefit Guaranty Corporation under Title IV of ERISA.

"G&W Trademarks and Logos" -- As defined in Section 7.08(a).

"Governmental Authority" -- Means (a) any court, tribunal, judicial body or arbitral body or arbitrator; (b) any domestic or foreign government or supranational body or authority whether multinational, national, federal, provincial, territorial, state, municipal or local and any governmental agency, governmental authority, governmental body, governmental bureau, governmental department, governmental tribunal or governmental commission of any kind whatsoever; (c) any subdivision or authority of any of the foregoing; (d) any quasi-governmental or private body or public body exercising any regulatory, administrative, expropriation or Taxing Authority under or for the account of the foregoing; (e) any stock or securities exchange; and (f) any public utility authority.

"GST" means the goods and services tax levied under Part IX of the *Excise Tax Act* (Canada).

"Haulage Agreement – CPKC / MNBR" -- Means the Haulage Agreement dated as of July 1, 2022 between MNBR and KCS.

"Hazardous Substances" -- Means all hazardous or toxic materials (including Toxic Substances), substances, wastes, pollutants, contaminants, constituents or solid wastes, or terms of similar meaning, defined as such or subject to regulation under any Environmental Law, or the presence, use, generation, storage, treatment, disposal, processing, transportation, handling, release or emission of which could give rise to Environmental Liabilities.

"Hoadley Newco" -- Means [a newly formed Alberta limited liability company owned directly or indirectly by G&W that G&W intends to use to acquire the Hoadley Subdivision Assets and to enter into the Hoadley Operating Rights & Interchange Agreement].

"Hoadley Operating Rights & Interchange Agreement" -- Means with respect to the transfer of the Hoadley Subdivision to Hoadley Newco as contemplated herein, the operating rights and interchange agreement in substantially the form attached hereto as **Exhibit [●]**.

"Hoadley Rail Facilities" -- As defined in Section 9.04.

"Hoadley Subdivision Assets" -- As defined in Section 3.01(a).

"Hoadley Subdivision" -- As defined in Recital C.

"Immaterial Contracts" -- Means all contracts, agreements, easements, franchises, rights-of-way, licenses, leases, commitments and understandings which are of a kind and on terms normally entered into by railroads in the ordinary course of their business, such as Pipe and Wire Crossing Agreements, side track agreements, road crossing agreements and the like, and which are not Overlap Contracts, Shipper Contracts, MNBR Real Property Leases, Canadian Real Property Leases or Excluded Assets.

"Indemnified Party" -- As defined in Section 15.04(a).

"Indemnifying Party" -- As defined in Section 15.04(a).

"Independent Accountant" -- Means Ernst & Young LLP.

"Injunction" -- As defined in Section 14.02(a).

"Interchange Agreement -- CPKC / CSXT" -- Means an interchange agreement between KCS and CSXT at or near Myrtlewood, AL.

"Interchange Agreement -- CSXT / MNBR" -- Means the Interchange Agreement to be entered into between CSXT and MNBR providing for the interchange of (i) local traffic to/from the Rail Line and (ii) traffic moving to/from AGR, at a mutually agreeable location(s) (including agreeable to CPKC to the extent that a location is on the Rail Line) at or near Myrtlewood, AL.

"KCS" -- Means The Kansas City Southern Railway Company, a Missouri corporation.

"Knowledge", "knowledge", "know" and the like -- With respect to G&W, all references herein to knowledge or know, shall mean the actual knowledge, after reasonable inquiry, of Rob Anderson and Garth Studstill and, with respect to CPKC, all references herein to knowledge or know, shall mean the actual knowledge, after reasonable inquiry, of Nikol Daniels or Alex Lamb.

"Law" -- Means any domestic or foreign constitution, law (including common law), statute, ordinance, rule, regulation, regulatory requirement, code, by-law, terms and conditions of any Permit, Order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by any Governmental Authority.

"MNBR" -- Means Meridian & Bigbee Railroad, L.L.C., an Alabama limited liability company.

"MNBR Allocation" -- As defined in Section 2.05.

"MNBR Assumed Obligations" -- As defined in Section 2.03(a).

"MNBR Licensed Assets" -- Means those certain assets set forth on **Schedule [●]**.

"MNBR Permitted Encumbrances" -- Means (i) zoning, entitlement, building and other land use regulations or codes imposed by Governmental Authorities; (ii) liens for Taxes, assessments (including special assessments), levies, fees and other governmental charges not yet due or which, if due and unpaid, are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP; and (iii) covenants, conditions, restrictions, easements, encroachments, servitudes, rights-of-way, and other matters or encumbrances of record affecting title to the MNBR Transferred Assets, including, without limitation, any matters or exceptions that would be disclosed by current title commitments, title reports, title searches, other comparable land record searches and/or current surveys, other than any covenant, condition, restriction, easement, encroachment, servitude, right-of-way, or other

matter which individually or in the aggregate materially negatively affects operation as a railroad and mortgages, deeds of trust, hypothecs and security interests affecting title to the MNBR Transferred Assets.

"MNBR Rail Facilities" -- As defined in Section 8.04.

"MNBR Real Property" -- Means the real property (including MNBR Real Property Interests) on or that constitute the Rail Line.

"MNBR Real Property Defect of Title" -- As defined in Section 6.03(a).

"MNBR Real Property Interests" -- Means leases, easements, licenses, Permits, rights-of-way, and all other interests in real property other than fee simple title.

"MNBR Real Property Leases" -- As defined in Section 8.13.

"MNBR Transferred Assets" -- As defined in Section 2.01(a).

"MNBR Transferred Assets Excluded Obligations" -- As defined in Section 2.03(b).

"Office Lease" -- Means the amended and restated office lease dated as of June 1, 2015 between CPRC, as landlord, and the OVR Tenant, as tenant.

{{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]}}

"Operating Plan – KCS / MNBR" means the Operating Plan between KCS and MNBR in the form attached hereto as Exhibit [●].

"Operative Documents" -- Means the Bill of Sale, the Deed(s), the Assignment and Assumption Agreement, the [●], and the certificates in the form attached hereto as Exhibit [●] and [●].

"Option" -- As defined in Section 3.07(a).

"Option Period" -- As defined in Section 3.07(a).

"Order" -- Means any order, decree, rule, regulation, stipulation, judgment, writ, injunction, determination or award of a Governmental Authority acting in an adjudicative, rulemaking or regulatory capacity, or of an arbitrator with applicable jurisdiction over the subject matter.

"Order in Council" -- As defined in Section 10.02(iii).

"Overall Cap Reps" -- As defined in Section 15.01(c).

"Overlap Contracts" -- Means Contracts other than Shipper Contracts that relate to the rail operations conducted on the MNBR Transferred Assets or the Canadian Transferred Assets, as the case may be, but also relate to other assets of G&W or CPKC and their subsidiaries unrelated to the MNBR Transferred Assets or the Canadian Transferred Assets (but excluding contracts related to general corporate, administrative, sales, dispatch and like functions).

"OVR Lease" -- Means the third amended and restated lease agreement dated as of May 15, 2015 between CPRC, as landlord, and the OVR Tenant, as tenant.

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"OVR Tenant" -- Means RaiLink Canada Ltd.

"Permits" -- Means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances, waivers, exemptions, qualifications, agreements and similar rights obtained, or required to be obtained, from Governmental Authorities.

"Permitted Use Period" -- As defined in Section 7.08(a).

"Person" -- Means an association, a corporation, an individual, a partnership, a limited liability company, a trust, or any other entity or organization, including a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

"Pipe and Wire Crossing Agreements" -- Means cell tower and antennae leases, bill board agreements, easements and all longitudinal usages, other than railroad, including water, gas, sanitary sewer, storm sewer, roadways, pipelines, conduits, laterals, drains, ditches, irrigation, conveyors, telephone, radio, radar or laser transmission systems, wire, fiber, fiber optics, utility, electric and energy transmission lines and all other longitudinal occupations of every kind and character.

"Plot 6" -- Means the lands located in the Province of Alberta, Canada, as more specifically shown on the map and set forth in the description attached hereto as **Exhibit [●]**.

"Plot 6 Right of First Refusal" -- Means the Right of First Refusal Agreement between **[AIH Land Newco]** and CPRC, in the form attached hereto as **Exhibit [●]**, relating to the Plot 6 ROFR Lands.

"Plot 6 ROFR Lands" -- Means those portions of Plot 6 not included in the Scotford Transferred Lands.

"Plot 21" -- Means the lands located in the Province of Alberta, Canada, as more specifically shown on the map and set forth in the description attached hereto as **Exhibit [●]**.

"Plot 21 Easement Agreement" -- Means the Easement or Right-of-Way Agreement to be granted by CPRC in favour of **[AIH Land Newco]** over the Plot 21 Easement Area, in the form attached hereto as **Exhibit [●]**.

"Plot 21 Easement Area" -- Means the portion of Plot 21 approximately **[●]** metres in width specifically shown on the map attached hereto as **Exhibit [●]**.

"Post-Closing Confidential Information" -- As defined in Section 6.02.

"Pre-Closing Tax Period" -- Means all taxable periods ending on or before the Closing Date, and the portion of the Straddle Period ending on the Closing Date.

"Rate Divisional Agreement" -- Means with respect to the transfer of the Hoadley Subdivision to Hoadley Newco, as contemplated herein, the one (1)-year agreement in substantially the form attached hereto as **Exhibit [●]**.

"Rail Line" -- As defined in Recital A.

"Railway Operating Approvals – Hoadley Newco" -- Means (i) an approval to operate a railway pursuant to the *Railway (Alberta) Act* sufficient for Hoadley Newco to operate the Hoadley Subdivision, and (ii) a railway operating certificate to operate over federally-regulated tracks pursuant to the *Railway Safety Act* (Canada) sufficient for Hoadley Newco to fully exercise its rights under the Hoadley Operating Rights & Interchange Agreement.

"Railway Operating Approvals – **[AIH Newco]**" -- Means (i) an approval to operate a railway pursuant to the *Railway (Alberta) Act*, and (ii) a railway operating certificate to operate over federally-regulated tracks pursuant to the *Railway Safety Act* (Canada), sufficient in each case

for **[AIH Newco]** to fully exercise its rights under the AIH Operating Rights & Interchange Agreement.

"Railway Operating Approvals" -- Means the Railway Operating Approvals – Hoadley Newco and the Railway Operating Approvals – **[AIH Newco]**.

"Retained Trackage Rights Agreement" – Means the Trackage Rights Agreement between KCS and MNBR in the form attached hereto as **Exhibit [●]**.

"Scotford Alternative Agreement"-- As defined in Section 3.07(d).

"Scotford Assets" -- As defined in Section 3.01(a).

"Scotford Lands" -- As defined in Recital D.

"Scotford Easement Agreement" -- Means the Easement or Right-of-Way Agreement to be granted by **[AIH Land Newco]** in favour of CPRC over the Scotford Transferred Lands, in the form attached hereto as **Exhibit [●]**.

"Scotford Transferred Lands" – Means, collectively (i) the portion of the Scotford Lands that are the subject of the exercise of the Option pursuant to Section 3.07, if such Option is exercised; and (ii) if such Option is exercised, the Existing Scotford Right-of-Way Lands.

"Second Train Trigger" -- As defined in **Exhibit DD**.

"Shipper Contracts" -- Means Contracts for the movement of traffic which as of the Closing Date originates solely on the Rail Line.

"STB" -- Means Surface Transportation Board.

"STB Approval" -- Means the receipt from the STB of one or more STB Orders authorizing the parties to consummate the transactions contemplated hereby that require STB authority.

"STB Order" -- Means the order, decision or notice issued by the STB approving, exempting, conditioning, or otherwise disposing of the various transactions contemplated by this

Agreement that require STB authority; *provided, however*, that if more than one STB Order is issued in connection with such contemplated transactions, all such STB Orders shall for purposes of this Agreement, unless otherwise indicated, be referred to collectively as the "**STB Order**".

"Step-up Compensation" -- As defined in Section 7.14(a).

"Straddle Period" -- Means any taxable period that includes, but does not end on, the Closing Date.

"Tax" or "Taxes" -- Means all United States and Canadian federal, state, provincial, local or foreign taxes, charges, fees, levies, assessments, and other similar charges in the nature of a tax, of any kind, including general, special, ad valorem, ordinary or extraordinary, income, profits, license, severance, occupation, windfall profits, capital gains, capital stock, transfer, registration, social security (or similar), production, franchise, gross receipts, payroll, sales, employment, use, property, customs, tariffs, value added, GST, estimated, stamp, alternative or add-on minimum, environmental or withholding tax, and any other similar duty, assessment or governmental charge, whether the same have been paid prior to the Closing Date, are then due or are payable thereafter (in installments or otherwise), together with any interest, penalties, fines, related liabilities or additions attributable to such taxes, charges, fees, levies, assessments or similar charges.

"Tax Authority" -- Means any Governmental Authority responsible for the imposition, determination, administration or collection of any Tax.

"Tax Returns" -- Means any return, declaration, document, report or similar statement filed or required to be filed with a Taxing Authority with respect to any Taxes (including any attached schedules), including any information return, claim or refund, amended return and declaration of estimated Tax.

"Termination of Existing Interchange Agreement – CSXT / MNBR" -- Means the termination of the existing Interchange Agreement between CSXT and MNBR for the interchange of traffic in Montgomery, AL.

"Termination of Haulage Agreement -- CPKC / MNBR" – Means the termination of the Haulage Agreement – CPKC / MNBR in the form attached hereto as **Exhibit [●]**.

"Third Party Claims" -- As defined in Section 15.01(e).

"Title Examination Period" -- Means the period of time commencing on the effective date of this Agreement and ending on the date that is one hundred twenty (120) days thereafter.

"Toxic Substances" -- Means any materials which are subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., or any other applicable federal, state, provincial or other laws now in force relating to toxic substances. The term "**Toxic Substances**" includes but is not limited to asbestos in any form or condition, petroleum and derivative products, polychlorinated biphenyls (PCBs), toxic-by-inhalation chemicals, lead-based paints, and per- and poly-fluoroalkyl substances.

"Trackage Rights Agreement – AGR / KCS" – Means the Trackage Rights Agreement to be entered into between AGR and KCS in the form attached hereto as Exhibit [●]. [AGR to interchange with CSXT and MNBR at Myrtlewood.]

"Trackage Rights Agreement -- CSXT / MNBR" – Means the Trackage Rights Agreement to be entered into between CSXT and MNBR.

"Trackage Rights Agreement – KCS / CSXT" – Means the Trackage Rights Agreement to be entered into between KCS and CSXT. [KCS will grant CSXT trackage rights at Myrtlewood for purposes of interchange with MNBR and AGR.]

"Transfer Taxes" means all transfer, documentary, sales, use, stamp, registration, value added, GST and other such Taxes and fees (including any real property transfer Tax and any similar Tax related to the transfer of property but excluding Taxes determined principally by reference to income or gain) (including any penalties and interest) incurred in connection with this Agreement.

"WARN Act" -- Means Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et. seq. and similar state, local and foreign Laws.

"Works" -- As defined in Section 15.04.

1.02 Other Definitional Provisions. Unless otherwise stated, terms, phrases and expressions used in this Agreement (whether or not capitalized) which pertain to railroad operations and service shall have the meaning commonly given such terms under common usage and practice of the railroad industry in 2023. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein", "hereof", "hereby", "hereunder" and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph or Section where they appear, unless the context otherwise requires. The term "including" shall mean, and shall be interpreted as though such term were, the phrase "including, without limitation," in each place where such term appears whether or not "without limitation" or a similar phrase appears in each case. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and paragraphs of such Section, unless the reference is expressly made to a particular subsection or paragraph of such Section. Unless otherwise indicated, references to "\$" means United States of America dollars.

II. SALE AND PURCHASE OF MNBR TRANSFERRED ASSETS.

2.01 Sale and Purchase of MNBR Transferred Assets.

(a) Sale and Purchase of MNBR Transferred Assets. Subject to the terms and conditions hereof, G&W agrees to cause MNBR to sell, transfer, assign, convey and deliver to KCS, and CPKC agrees to cause KCS to purchase from MNBR, all right, title and interest of MNBR, including its common carrier authority, in and to (x) the Rail Line, and (y) all real property, and other properties, assets, rights, benefits and privileges, both tangible and intangible, located on, under or about the Rail Line, owned, leased, used or held for use by G&W or granted to or purported to be granted to G&W in connection with the operation or use of the Rail Line free and clear of all Encumbrances (the "**MNBR Transferred Assets**"), subject in each case only to MNBR Permitted Encumbrances and the retained rights described in Section 2.06 and set forth in the Retained Trackage Rights Agreement; excluding, however, the Excluded Assets. The MNBR Transferred Assets include:

(i) the Rail Line, including the MNBR Real Property that constitutes the Rail Line, whether held in fee simple title or otherwise;

(ii) building leases, track leases, trackage rights, haulage, interchange and joint facilities agreements and other Contracts, including Pipe and Wire Crossing Agreements and Immaterial Contracts exclusively related to or associated with the Rail Line, set forth on **Schedule 2.01(a)(ii)** hereto;

(iii) all operating rail property owned by MNBR, including, without limitation, the roadbed, rail, track (including the main track, side tracks, spur tracks, connecting tracks, yard tracks, industry tracks and team tracks), connections, ties, bridges, ballast, track fastening, railroad signs, fixed signaling and connecting apparatus, stations, culverts, structures, communications and signal facilities, parking and storage areas, depots, yards, shops, buildings,

and all other improvements, fixtures and appurtenances owned, used, held for use or otherwise held by MNBR which relate to the operation or use of any of the MNBR Transferred Assets or the Rail Line;

(iv) all MNBR Real Property Interests owned, leased, used or held for use by MNBR which relate to the operation or use of any of the MNBR Transferred Assets, set forth on **Schedule 2.01(a)(iv)** hereto;

(v) except for the retained rights described in Section 2.06 and set forth in the Retained Trackage Rights Agreement, all franchises, privileges, licenses and Permits conferred, given, owned, acquired, appropriated, used or useful for any purpose which exclusively relate to the operation or use of any of the MNBR Transferred Assets or the Rail Line set forth on **Schedule 2.01(a)(v)** hereto;

(vi) Facilities Services Agreements which exclusively relate to the Rail Line each of which (to the extent in effect on the date hereof) is set forth on **Schedule 2.01(a)(vi)** hereto; and

(vii) rights under Overlap Contracts set forth on **Schedule 2.01(a)(vii)** hereto to the extent related to the MNBR Transferred Assets.

2.02 **Excluded Assets.** It is expressly understood and agreed that the MNBR Transferred Assets shall exclude the Excluded Assets, including, without limitation, any moveable assets relating to the MNBR Transferred Assets, including locomotives, rolling stock, equipment and vehicles, tools and other similar moveable assets.

2.03 **MNBR Assumed Obligations.**

(a) **MNBR Transferred Assets Assumed Obligations.** As additional consideration for the MNBR Transferred Assets, KCS shall assume the following obligations and

liabilities of MNBR (the "**MNBR Assumed Obligations**"), except to the extent any of the following include MNBR Transferred Assets Excluded Obligations in which case they shall not be assumed by KCS, and none of the following shall diminish CPKC's rights with respect to any representations and warranties under this Agreement:

(i) obligations and liabilities of MNBR arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under any Assumed Contracts exclusively related to or associated with the Rail Line and transferred to KCS at Closing;

(ii) obligations and liabilities of MNBR arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under MNBR Real Property Interests assigned to KCS pursuant to Section 2.01(a)(iv);

(iii) obligations and liabilities of MNBR arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under each of the licenses, Permits, approvals, consents, certificates and other authorizations from any and all Governmental Authorities that are assigned to CPKC pursuant to Section 2.01(a)(v);

(iv) all real estate Taxes and assessments that KCS is obligated to assume under Section 2.03(c); and

(v) obligations arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under Overlap Contracts transferred to CPKC pursuant to Section 2.01(a) to the extent they relate to the MNBR Transferred Assets.

(b) MNBR Transferred Assets Excluded Obligations. Notwithstanding any provision in this Agreement, at the Closing, G&W and MNBR shall retain and expressly agree to pay or otherwise perform or otherwise discharge and be responsible for all obligations and liabilities (i) to the extent not arising out of, in respect of or relating to the Rail Line or the MNBR Transferred Assets, (ii) to the extent not expressly set forth in Section 2.03(a) or (iii) to the extent set forth in this Section 2.03(b), including the following (collectively, "**MNBR Transferred Assets Excluded Obligations**"):

(i) any obligations or liabilities relating to or arising out of any Excluded Asset;

(ii) any obligations or liabilities with respect to the MNBR Transferred Assets arising prior to, and attributable to the period commencing prior to, 12:01 a.m. Chicago time on the day immediately following the Closing Date;

(iii) any obligations or liabilities with respect to the MNBR Transferred Assets related to non-compliance with Law arising prior to, and attributable to the period commencing prior to, 12:01 a.m. Chicago time on the day immediately following the Closing Date;

(iv) any obligations or liabilities relating to or arising out of any contracts or agreements of MNBR other than an Assumed Contract;

(v) any obligations or liabilities related to a pre-Closing breach of any MNBR Transferred Asset;

(vi) any Environmental Liabilities arising out of or relating to a pre-Closing non-compliance with Environmental Laws related to the MNBR Real Property and the other tangible property comprising the MNBR Transferred Assets, and from all Environmental Liabilities related to the pre-Closing environmental condition of the MNBR Real Property and the

other tangible property included in the MNBR Transferred Assets, including without limitation, any pre-Closing environmental contamination, or presence of Hazardous Substances and the handling, use, treatment, removal, storage, decontamination, cleanup, transport or disposal thereof, whether such contamination or Hazardous Substances are located in, on or under the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets, or has migrated or will migrate from or to the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets. The foregoing shall apply to any such condition or noncompliance with Environmental Laws, known or unknown, suspected or unsuspected, contemplated or un contemplated, and without limiting anything else in this Section 2.01(a)(vi), any such liability CPKC or its Affiliates may incur as a result of Third Party Claims;

(vii) (x) any Taxes of G&W or any Person within G&W's group, whether by reason of Treasury Regulations section 1.1502-6 or otherwise, including any Taxes arising in connection with the consummation of the transactions contemplated hereby and (y) any liability relating to, pertaining to, or arising out of the MNBR Transferred Assets for any Pre-Closing Tax Period;

(viii) all obligations and liabilities related to G&W's and any of its subsidiaries' or Affiliates' employees, including liabilities related to wages, employee benefits, severance benefits, collective bargaining agreements, statutory rights, wrongful termination claims, or Title IV of ERISA; and

(ix) obligations, commitments and liabilities, of whatever nature, whether known or unknown, asserted or unasserted, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated or due or to become due, which relate to the ownership or operation of the MNBR Transferred Assets attributable to the period on or

prior to 12:01 a.m. Chicago time on the day immediately following the Closing Date, including those arising under statutes, rules, regulations and effective or pending Orders of Governmental Authorities and any action, suit, investigation, claim, arbitration or litigation.

(c) MNBR Real Property Taxes.

(i) CPKC assumes and agrees to pay that portion of the real estate Taxes and assessments (including any special assessment) related to the MNBR Real Property payable in the calendar year in which the Closing occurs for the portion of the Straddle Period after the Closing Date. G&W assumes and agrees to pay that portion of the real estate Taxes and assessments (including any special assessment) related to the MNBR Real Property for all Pre-Closing Tax Periods. The real estate Taxes payable for the calendar year in which the Closing occurs for the portion of the Straddle Period through the end of the Closing Date shall be deemed to be the amount of the relevant Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in such Straddle Period commencing with the beginning of the Straddle Period and ending on the Closing Date, the denominator of which is the number of days in the entire Straddle Period. [Any real estate Taxes with respect to a Pre-Closing Tax Period not assumed by CPKC and which are not due and payable at the time of Closing shall be paid by G&W at Closing in accordance with Section 3.03(c). If the relevant property tax statements have not been received prior to Closing, the Taxes shall be prorated based upon the most recent property tax statements.

(ii) In the event that the actual amount of tax is different from the amount used in Section 2.03(c)(i) to allocate the Taxes between CPKC and G&W for such period, then such allocation shall be reallocated in accordance with the methodology described in Section 2.03(c)(i) using the actual amount of such Taxes. CPKC or G&W shall pay any additional amount

it owes to the other party based on such reallocation within twenty (20) Business Days after receiving such notice of the actual amount of Taxes. In the event that G&W and CPKC are unable to agree on the amount of such adjustments or readjustments, the matter shall be determined in accordance with the procedures described in Section 4.01. The provisions of this Section 2.03(c)(ii) shall survive the Closing.

2.04 [Exchange / Valuation.

(a) {{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

(b) The parties agree the valuation of the assets exchanged and avoided costs and other rights and opportunities transferred for the MNBR Transferred Assets is set forth on **Exhibit [●].**

2.05 [Allocation of Value. CPKC and G&W agree the value of the MNBR Transferred Assets shall be allocated in accordance with the rules under Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Exhibit [●]** (the "**MNBR Allocation**"). Each party shall file Tax Returns and other filings and reports for Tax purposes (including any forms or reports required to be filed pursuant to Section 1060 of the Code, the Treasury Regulation promulgated thereunder or any similar provisions of local, state and foreign Law) in a manner that is consistent with the MNBR Allocation and shall not take any position which is inconsistent with the MNBR Allocation unless required by final "determination" with the meaning of Section 1313(a) of the Code (or any similar provisions of local, state and foreign Law).]

2.06 Retained Rights.

(a) MNBR shall retain overhead and local trackage rights over the Rail Line that provide MNBR the rights set forth in the Retained Trackage Rights Agreement. MNBR shall retain pricing authority for the local and overhead traffic it handles pursuant to the exclusive retained trackage rights referred to above.

(b) The parties agree that in connection with MNBR's rights set forth in the Retained Trackage Rights Agreement, G&W and MNBR shall be entitled to continue to access and use the MNBR Licensed Assets without any obligation on the part of G&W or MNBR to pay any royalty fees or similar fees to CPKC or KCS relating to such access and use. Effective as of the Closing, CPKC grants, and shall cause KCS to grant, G&W and MNBR a non-exclusive, royalty free, fully paid up license in connection with the foregoing.

III. SALE AND PURCHASE OF CANADIAN TRANSFERRED ASSETS

3.01 Sale and Purchase of Canadian Transferred Assets.

(a) Sale and Purchase of Canadian Transferred Assets. Subject to the terms and conditions hereof, CPKC agrees to cause CPRC to sell, transfer, assign, convey and deliver to Hoadley Newco, and G&W agrees to cause Hoadley Newco to purchase from CPRC, all right, title and interest of CPKC in and to (w) the Hoadley Subdivision, and (x) all real property, and other properties, assets, rights, benefits and privileges, both tangible and intangible, located on, under or about the Hoadley Subdivision, owned, leased, used or held for use by CPKC or granted to or purported to be granted to CPKC in connection with the operation or use of the Hoadley Subdivision, free and clear of all Encumbrances (the "**Hoadley Subdivision Assets**"); and, if G&W exercises the Option within the Option Period, then (y) the Scotford Transferred Lands, and (z) all real property, and other properties, assets, rights, benefits and privileges, both tangible and intangible, located on, under or about the Scotford Transferred Lands, owned, leased, used or held

for use by CPKC or granted to or purported to be granted to CPKC in connection with the operation or use of the Scotford Transferred Lands, free and clear of all Encumbrances (the "**Scotford Assets**" and together with the Hoadley Subdivision Assets, collectively, the "**Canadian Transferred Assets**"), subject in each case only to Canadian Permitted Encumbrances; excluding, however, the Excluded Assets. The Canadian Transferred Assets include:

- (i) the Hoadley Subdivision Assets consisting of:
 - a. the Hoadley Subdivision, including the Canadian Real Property that constitutes the Hoadley Subdivision, whether held in fee simple title or otherwise;
 - b. building leases, track leases, trackage rights, haulage, interchange and joint facilities agreements and other Contracts, including Pipe and Wire Crossing Agreements and Immaterial Contracts exclusively related to or associated with the Hoadley Subdivision, set forth on set forth on **Schedule 3.01(a)(i)(b)** hereto;
 - c. all operating rail property owned by CPRC, including, without limitation, the roadbed, rail, track (including the main track, side tracks, spur tracks, connecting tracks, yard tracks, industry tracks and team tracks), connections, ties, bridges, ballast, track fastening, railroad signs, fixed signaling and connecting apparatus, stations, culverts, structures, communications and signal facilities, parking and storage areas, depots, yards, shops, buildings, and all other improvements, fixtures and appurtenances owned, used, held for use or otherwise held by CPRC which relate to the operation or use of any of the Hoadley Subdivision Assets;
 - d. all Canadian Real Property Interests owned, leased, used or held for use by CPRC which relate to the operation or use of any of the Hoadley Subdivision Assets, set forth on **Schedule 3.01(a)(i)(d)** hereto;

e. all franchises, privileges, licenses and Permits conferred, given, owned, acquired, appropriated, used or useful for any purpose which exclusively relate to the operation or use of any of the Hoadley Subdivision Assets set forth on **Schedule 3.01(a)(i)(e)**; and

f. Facilities Services Agreements which exclusively relate to the Hoadley Subdivision each of which (to the extent in effect on the date hereof) is set forth on **Schedule 3.01(a)(i)(f)** hereto; and

g. rights under Overlap Contracts relating to the Hoadley Subdivision set forth on **Schedule 3.01(a)(i)(g)** hereto to the extent related to the Hoadley Subdivision; and

(ii) if G&W exercises the Option within the Option Period, the Scotford Assets consisting of the Scotford Transferred Lands, including the Canadian Real Property that constitutes the Scotford Transferred Lands, whether held in fee simple or otherwise.

3.02 Excluded Assets. It is expressly understood and agreed that the Canadian Transferred Assets shall exclude the Excluded Assets, including, without limitation, any moveable assets relating to the Hoadley Subdivision Assets, including locomotives, rolling stock, equipment and vehicles, tools and other similar moveable assets.

3.03 Canadian Transferred Assets Assumed Obligations.

(a) Canadian Transferred Assets Assumed Obligations. As additional consideration for the Canadian Transferred Assets, G&W Canadian Co. shall assume the following obligations and liabilities of CPRC (the “**Canadian Transferred Assets Assumed Obligations**”), except to the extent any of the following include Canadian Transferred Asset Excluded Obligations in which case they shall not be assumed by G&W Canadian Co., and none of the following shall

diminish G&W Canadian Co.'s rights with respect to any representations and warranties under this Agreement:

(i) obligations and liabilities of CPRC arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under any Assumed Contracts exclusively related to or associated with the Canadian Transferred Assets and transferred to G&W Canadian Co. at Closing;

(ii) obligations and liabilities of CPRC arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under Canadian Real Property Interests assigned to G&W Canadian Co. pursuant to Section 3.01(a)(i)d;

(iii) obligations and liabilities of CPRC arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under each of the licenses, Permits, approvals, consents, certificates and other authorizations from any and all Governmental Authorities that are assigned to G&W Canadian Co. pursuant to Section 3.01(a)(i)e;

(iv) all property Taxes and assessments that G&W Canadian Co. is obligated to assume under Section 3.03(c); and

(v) obligations arising from and after, and attributable to the period commencing on and after, 12:01 a.m. Chicago time on the day immediately following the Closing Date under Overlap Contracts transferred to G&W pursuant to Section 3.01(a) to the extent they relate to the Canadian Transferred Assets.

(b) Excluded Obligations. Notwithstanding any provision in this Agreement, at the Closing, CPKC and CPRC shall retain and expressly agrees to pay or otherwise perform or

otherwise discharge and be responsible for all obligations and liabilities (i) to the extent not arising out of, in respect of or relating to the Canadian Transferred Assets, (ii) to the extent not expressly set forth in Section 3.03(a) or (iii) to the extent set forth in this Section 3.03(b), including the following (collectively, "**Canadian Transferred Assets Excluded Obligations**"):

(i) any obligations or liabilities relating to or arising out of any Excluded Asset;

(ii) any obligations or liabilities with respect to the Canadian Transferred Assets arising prior to, and attributable to the period commencing prior to, 12:01 a.m. Chicago time on the day immediately following the Closing Date;

(iii) any obligations or liabilities with respect to the Canadian Transferred Assets related to non-compliance with Law arising prior to, and attributable to the period commencing prior to, 12:01 a.m. Chicago time on the day immediately following the Closing Date;

(iv) any obligations or liabilities relating to or arising out of any contracts or agreements of CPKC other than an Assumed Contract;

(v) any obligations or liabilities related to a pre-Closing breach of any Canadian Transferred Assets;

(vi) any Environmental Liabilities arising out of or relating to pre-Closing non-compliance with Environmental Laws related to the Canadian Real Property and the other tangible property comprising the Canadian Transferred Assets, and from all Environmental Liabilities related to a pre-Closing environmental condition of the Canadian Real Property and the other tangible property included in the Canadian Transferred Assets, including without limitation, any pre-Closing environmental contamination, or presence of Hazardous Substances and the

handling, use, treatment, removal, storage, decontamination, cleanup, transport or disposal thereof, whether such contamination or Hazardous Substances are located in, on or under the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets, or has migrated or will migrate from or to the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets. The foregoing shall apply to any such condition or noncompliance with Environmental Laws, known or unknown, suspected or unsuspected, contemplated or un contemplated, and without limiting anything else in this Section 3.03(b)(vi) or any such liability G&W or its Affiliates may incur as a result of Third Party Claims;

(vii) (x) any liability of any Person within the CPKC group whether by reason of Treasury Regulations section 1.1502-6 or otherwise, including any Taxes arising in connection with the consummation of the transactions contemplated hereby and (y) any liability relating to, pertaining to, or arising out of the Canadian Transferred Assets for any Pre-Closing Tax Period;

(viii) All obligations and liabilities related to CPKC's and any of its subsidiaries' or Affiliates' employees, including liabilities related to wages, employee benefits and pension plans, severance benefits, collective bargaining agreements, statutory rights, wrongful termination claims, or Title IV of ERISA, if applicable; and

(ix) Obligations, commitments and liabilities, of whatever nature, whether known or unknown, asserted or unasserted, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated or due or to become due, which relate to the ownership or operation of the Canadian Transferred Assets attributable to the period on or prior to 12:01 a.m. Chicago time on the day immediately following the Closing Date, including

those arising under statutes, rules, regulations and effective or pending Orders of Governmental Authorities and any action, suit, investigation, claim, arbitration or litigation.

(c) Canadian Real Property Taxes.

(i) G&W assumes and agrees to pay that portion of the property Taxes and assessments (including any special assessment) with respect to the Canadian Transferred Assets payable in the calendar year in which the Closing occurs for the portion of the Straddle Period after the Closing Date. CPKC assumes and agrees to pay that portion of the property Taxes and assessments (including any special assessment) with respect to the Canadian Transferred Assets for all Pre-Closing Tax Periods. The property Taxes payable for the calendar year in which the Closing occurs for the portion of the Straddle Period through the end of the Closing Date shall be deemed to be the amount of the relevant Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in such Straddle Period commencing with the beginning of the Straddle Period and ending on the Closing Date, the denominator of which is the number of days in the entire Straddle Period. [Any property Taxes with respect to a Pre-Closing Tax Period not assumed by G&W and which are not due and payable at the time of Closing shall be paid by CPKC at Closing in accordance with Section [●]]. If the relevant property tax statements have not been received prior to Closing, the taxes shall be prorated based upon the most recent property tax statements.

(ii) In the event that the actual amount of tax is different from the amount used in Section 3.03(c)(i) to allocate the Tax between CPKC and G&W for such period, then such allocation shall be reallocated in accordance with the methodology described in Section 3.03(c)(i) using the actual amount of such Tax. CPKC or G&W shall pay any additional amount it owes to the other party based on such reallocation within twenty (20) Business Days after

receiving such notice of the actual amount of Tax. In the event that G&W and CPKC are unable to agree on the amount of such adjustments or readjustments, the matter shall be determined in accordance with the procedures described in Section 4.01. The provisions of this Section 3.03(c)(ii) shall survive the Closing.

3.04 Exchange/Valuation.

(a)

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(b) The parties agree the valuation of the assets exchanged and avoided costs and other rights and opportunities transferred for the Canadian Transferred Assets is set forth on Exhibit [●].

3.05 [Allocation of Value. CPKC and G&W agree the value of the Canadian Transferred Assets, the Office Lease Waiver Agreement, the OVR Lease Waiver Agreement, the Option and/or the CAGY Payment Reduction shall be allocated in accordance with Exhibit [●]. Each party shall file tax returns and other filings and reports for Tax purposes in a manner that is consistent with the CPKC Allocation and shall not take any position which is inconsistent with the CPKC Allocation unless required by a final “determination” by a Tax Authority, including within the meaning of Section 1313(a) of the Code (or any similar provisions of local, state and foreign Law).]

3.06 Withholding. CPKC and G&W (and any of their Affiliates or agents) shall each be entitled to deduct and withhold from any amount payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of applicable Law. To the extent that amounts are so withheld and paid to the

proper taxing authority pursuant to any applicable Tax Law, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such holder in respect of which such deduction and withholding was made. The parties hereto agree to use commercially reasonable efforts to notify the other party at least 10 Business Days prior to making any such deduction or withholding and agree to cooperate in good faith with such other party to reduce or eliminate any such deduction or withholding as permitted by applicable Tax Law.

3.07 Option to Purchase Scotford Assets.

(a) CPKC hereby grants G&W an exclusive and irrevocable option to purchase the Scotford Assets (the "**Option**") and G&W shall be entitled to register a caveat in respect of the Option on title to the Scotford Lands. The Option may only be exercised by G&W until 11:59 p.m. Chicago time on December 27, 2023 (the "**Option Period**"). If the Option is not exercised by G&W within the Option Period, G&W shall forthwith discharge any caveat that it has registered in respect of the Option from title to the Scotford Lands.

(b) To exercise the Option, G&W must deliver written notice to CPKC of its intention to exercise the Option at any time prior to the expiry of the Option Period. If G&W does not deliver written notice of its intention to exercise the Option to CPKC prior to the expiry of the Option Period or delivers written notice to CPKC prior to the expiry of the Option Period of G&W's intention to acquire property in AIH from a third party, then the Option shall terminate and be of no further force or effect immediately upon delivery of such written notice.

(c) If G&W exercises the Option within the Option Period, CPKC shall transfer to **[AIH Land Newco]** the Scotford Assets, free and clear of all Encumbrances (except for Canadian Permitted Encumbrances), on Closing on the terms and subject to the conditions set forth in this Agreement.

(d)

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3.08 Scotford Easement Agreement.

(a) If G&W exercises the Option within the Option Period and purchases the Scotford Assets, the applicable parties shall execute and deliver the Scotford Easement Agreement at Closing in order to reserve an easement or right-of-way over the Scotford Transferred Lands, in favour of CPKC to provide it with access to and from the remainder of its lands located north of the Scotford Transferred Lands. The easement or right-of-way will not unreasonably interfere with **[AIH Newco]** or **[AIH Land Newco]**'s operations. **[AIH Land Newco]** will have the right to require the easement or right-of-way to be relocated at **[AIH Land Newco]**'s sole cost and expense so long as it provides CPKC a reasonable alternative, all as further set forth in the Scotford Easement Agreement.

(b) Following Closing, CPKC shall be entitled to register the Scotford Easement Agreement, or a caveat in respect thereof, on title to the Scotford Transferred Lands.

3.09 Plot 21 Easement Agreement.

(a) The applicable parties shall execute and deliver the Plot 21 Easement Agreement at Closing in order to reserve an easement or right-of-way over the Plot 21 Lands in favour of **[AIH Land Newco]** to permit the connection of the Scotford Transferred Lands at the location where the Existing Scotford Right-of-Way Lands abut Plot 21 to CPKC's existing infrastructure. The easement or right-of-way will not unreasonably interfere with CPKC or CPKC's operations. CPKC will have the right to require the easement or right-of-way to be relocated at CPKC's sole cost and expense so long as it provides **[AIH Land Newco]** a reasonable alternative, all as further set forth in the Plot 21 Easement Agreement.

(b) Following Closing, G&W shall be entitled to register the Plot 21 Easement Agreement, or a caveat in respect thereof, on title to the Plot 21 Lands.

3.10 Plot 6 Right of First Refusal.

(a) If G&W exercises the Option within the Option Period and purchases the Scotford Assets, the applicable parties shall execute and deliver the Plot 6 Right of First Refusal at Closing in order to grant **[AIH Land Newco]** a right of first refusal for a period of twenty (20) years after Closing to purchase the Plot 6 ROFR Lands in the event that CPKC intends to sell the Plot 6 ROFR Lands to a third party, all as further set forth in the Plot 6 Right of First Refusal.

(b) Following Closing, **[AIH Land Newco]** shall be entitled to register a caveat in respect of the Plot 6 Right of First Refusal on title to the Plot 6 ROFR Lands.

3.11 CPKC Right of First Refusal.

(a) The applicable parties shall execute and deliver the CPKC Right of First Refusal at Closing in order to grant CPKC a right of first refusal to re-purchase all or any part of the Canadian Transferred Assets in the event of a proposed transfer, sale or assignment by Hoadley

Newco of the Canadian Transferred Assets relating to the Hoadley Subdivision or by **[AIH Land Newco]** of the Canadian Transferred Assets relating to the Scotford Transferred Lands, as the case may be, for continued railway operations to a Class I railroad, all as further set forth in the CPKC Right of First Refusal.

(i) G&W hereby covenants and agrees with CPKC that, in the event of a proposed transfer, sale, or assignment of the Canadian Transferred Assets by Hoadley Newco and/or **[AIH Land Newco]**, as the case may be, other than for continued railway operations to a Class I railroad, such transfer, sale, or assignment shall only be to a Person that has creditworthiness and insurance coverage acceptable to CPKC, in its sole discretion, acting reasonably.

(ii) The rights granted in favour of CPKC in this Section shall run with the title to the Hoadley Subdivision Lands and the Scotford Transferred Lands, and shall bind successors in title to such lands. The provisions of this Section 3.11 shall not merge on, but shall survive Closing.

(iii) Following Closing, CPKC shall be entitled to register a caveat in respect of the CPKC Right of First Refusal on title to the Scotford Transferred Lands and the Hoadley Subdivision.

IV. ADJUSTMENTS AND PRORATIONS

4.01 Items Subject to Adjustment.

(a) CPKC and G&W agree to the administration and proration procedures set forth on **Exhibit [●]** hereto. If any of the items of proration and adjustment set forth on **Exhibit [●]** are not capable of calculation within the time periods provided in Section 4.01(b) because such item (or its amount) (x) is being contested in good faith by appropriate proceedings (other than proceedings between CPKC and G&W or their Affiliates) or (y) is by its nature not capable of

calculation within such time periods, then such item of proration and adjustment shall remain open and be adjusted between CPKC and G&W in accordance with this Section 4.01 promptly upon completion of such proceedings or upon such item becoming capable of calculation, as applicable. There will be no adjustment between the parties for salaries, wages or other employee compensation or benefits.

(b) Determination of Adjustment. Within ninety (90) days after the Closing Date, G&W shall prepare a statement of adjustments pursuant to Section 4.01, including **Exhibit [●]** and **Exhibit [●]** hereto (the "**Final Statement**"). During G&W's preparation of the Final Statement and any subsequent period of dispute with respect to the calculations required by this Section 4.01, CPKC shall cooperate in good faith with G&W to the extent reasonably requested by G&W to prepare the Final Statement or to investigate the basis for any dispute, CPKC and its representatives shall have reasonable access, during normal business hours and upon reasonable advance notice, to all relevant work papers, schedules, memoranda and other documents prepared by G&W or any of its Affiliates or any of their respective representatives in connection with the preparation of the Final Statement, and to finance personnel of G&W or any of its Affiliates and any other information which CPKC reasonably requests in connection with the preparation of the Final Statement, which materials and communications shall be subject to customary confidentiality agreements and access letters entered into by CPKC prior to receiving such materials. G&W shall, and shall cause its subsidiaries and representatives to, cooperate reasonably with CPKC and its representatives in connection therewith. CPKC shall have sixty (60) days following receipt of the Final Statement to review the Final Statement and to notify G&W in writing of any dispute regarding the amounts set forth therein (the "**Dispute Notice**"), specifying the reasons therefor in reasonable detail. If no Dispute Notice is delivered by CPKC within such sixty (60) day review

period or if CPKC delivers a written acceptance of the Final Statement, then such Final Statement shall be conclusive and binding on the parties in all respects and deemed accepted by CPKC. If CPKC delivers a Dispute Notice within such sixty (60) day review period, then the amount of the adjustments shall be determined by the Independent Accountant. The determination by the Independent Accountant shall be conclusive and binding on all parties, and shall be made within sixty (60) days after such adjustments are so submitted by delivery to CPKC and G&W of a written report (accompanied by appropriate information and documentation in reasonable detail supporting the Independent Accountant's calculations). The Independent Accountant (i) may consider only those items and amounts (and related items and amounts) as to which CPKC and G&W have disagreed within the time periods and on the terms specified above, (ii) shall be bound by the provisions of this Section 4.01 and (iii) shall not make a determination less than the lower, nor more than the higher, of CPKC's and G&W's respective calculations set forth in the Final Statement or any Dispute Notice. G&W and CPKC shall each pay one-half of the fees and expenses of the Independent Accountant in making such determination. If such adjustments result in a balance due G&W, CPKC shall pay such balance to G&W by wire transfer of same day funds within fifteen (15) days after the date of determination of the Final Statement. If such adjustments result in a balance due CPKC, G&W shall pay such balance to CPKC by wire transfer of same day funds within fifteen (15) days after the date of determination of the Final Statement.

V. CLOSING

5.01 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the office of Stinson LLP, Kansas City, MO (or remotely using procedures satisfactory to CPKC and G&W) at 10:00 a.m. local time on a date agreed by CPKC and G&W within ten (10) days after the later to occur of (a) the effective date of the STB Order, and (b) the day on which all other conditions (other than the conditions set forth in Sections 12.04

and 13.04 of this Agreement, which conditions shall have been satisfied or waived on the Closing Date) to each party's obligations under Articles XII and XIII have been satisfied or waived as provided therein, or at such other day, time and place as the parties may mutually agree (the "**Closing Date**").

5.02 Deliveries by G&W. At or prior to the Closing, G&W shall deliver to CPKC the following, with all instruments being duly executed:

- (i) Assignment and Assumption Agreement.
- (ii) Deed or Deeds for all fee owned real property, easements, rights-of-way and other similar interests in real property being conveyed in substantially the form of **Exhibit [●]** hereto and the related sales disclosure forms.
- (iii) Termination of Haulage Agreement – CPKC / MNBR.
- (iv) Retained Trackage Rights Agreement.
- (v) Amended Interchange Agreement – KCS / MNBR.
- (vi) an Internal Revenue Service Form W-9 from the applicable selling entity for U.S. federal income tax purposes.
- (vii) an affidavit of value in the prescribed form with respect to the transfer of the Hoadley Subdivision Lands.
- (viii) an assignment and assumption agreement with respect to the Hoadley Subdivision Assets, or other appropriate transfer documentation with respect to those assets comprising the Hoadley Subdivision Assets that are not held in fee simple.
- (ix) a bill of sale in respect of any chattels forming part of the Hoadley Subdivision Assets.
- (x) the Hoadley Operating Rights & Interchange Agreement.

- (xi) the Rate Divisional Agreement.
- (xii) the AIH Operating Rights and Interchange Agreement.
- (xiii) if the Option is exercised:
 - a. an affidavit of value in the prescribed form with respect of the transfer of Scotford Transferred Lands;
 - b. the Plot 21 Easement Agreement;
 - c. the Scotford Easement Agreement;
 - d. the Plot 6 Right of First Refusal; and
 - e. the CPKC Right of First Refusal with respect to the Canadian Transferred Assets relating to the Scotford Transferred Lands.
- (xiv) if the Option is not exercised, the Scotford Alternative Agreement.
- (xv) the CPKC Right of First Refusal with respect to the Canadian Transferred Assets relating to the Hoadley Subdivision.
- (xvi) Office Lease Waiver Agreement.
- (xvii) OVR Lease Waiver Agreement.
- (xviii) a GST undertaking and indemnity from G&W Canadian Co. certifying, inter alia, that it is purchasing the Canadian Transferred Assets on its own behalf and not as trustee or agent for any third parties, confirming that its GST registration is in full force and effect on Closing and has not been revoked, and providing an indemnity in favour of CPKC and CPRC in respect of all claims incurred, suffered or sustained as a result of a failure by G&W Canadian Co.: (i) to pay any federal, provincial or other taxes payable by G&W Canadian Co. in connection with the conveyance of the Canadian Transferred Assets, whether arising from a reassessment or otherwise; and (ii) to file any returns, certificates, filings, elections, notices or

other documents required to be filed by G&W or any Affiliate with any federal, provincial or other Taxing Authorities in connection with the conveyance of the Canadian Transferred Assets.

(xix) Trackage Rights Agreement – AGR / KCS.

(xx) certificates of good standing (or equivalent) issued by the relevant corporate registrar(s) for the G&W Entities.

(xxi) [such other deeds, bills of sale, assignments, documents and other instruments of transfer and conveyance as may reasonably be requested by CPKC, each in form and substance satisfactory to CPKC.]

5.03 Deliveries by CPKC. At the Closing, CPKC shall deliver to G&W the following, with all instruments being duly executed:

(i) Assignment and Assumption Agreement.

(ii) Termination of Haulage Agreement – CPKC / MNBR.

(iii) Retained Trackage Rights Agreement.

(iv) Amended Interchange Agreement – KCS / MNBR.

(v) a registrable transfer of land in the prescribed form with respect of the transfer of the Hoadley Subdivision Lands.

(vi) an assignment and assumption agreement with respect to the Hoadley Subdivision Assets, or other appropriate transfer documentation with respect to those assets comprising the Hoadley Subdivision Assets that are not held in fee simple.

(vii) a bill of sale in respect of any chattels forming part of the Hoadley Subdivision Assets.

(viii) the Hoadley Operating Rights & Interchange Agreement.

(ix) the Rate Divisional Agreement.

- (x) the AIH Operating Rights & Interchange Agreement.
- (xi) if the Option is exercised:
 - a. a registrable transfer of land in the prescribed form with respect of the transfer of Scotford Transferred Lands;
 - b. the Plot 21 Easement Agreement;
 - c. the Scotford Easement Agreement;
 - d. the Plot 6 Right of First Refusal; and
 - e. the CPKC Right of First Refusal with respect to the Canadian Transferred Assets relating to the Scotford Transferred Lands.
- (xii) if the Option is not exercised, the Scotford Alternative Agreement.
- (xiii) the CPKC Right of First Refusal with respect to the Canadian Transferred Assets relating to the Hoadley Subdivision.
- (xiv) Office Lease Waiver Agreement.
- (xv) OVR Lease Waiver Agreement.
- (xvi) a certificate executed by an authorized signing officer of CPRC confirming that it is not a non-resident within the meaning of Section 116 of the Income Tax Act (Canada).
- (xvii) Trackage Rights Agreement – AGR /KCS.
- (xviii) certificates of good standing (or equivalent) issued by the relevant corporate registrar(s) for the CPKC Entities.
- (xix) [such other deeds, bills of sale, assignments, documents and other instruments of transfer and conveyance as may reasonably be requested by G&W, each in form and substance satisfactory to G&W.]

5.04 Consents; Cooperation. Subject to Section 16.01, each of the parties hereto shall use Best Efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable, and execute and deliver such documents and other papers, as may be necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including to obtain the STB Order, the Railway Operating Approvals, any required consents or waivers of termination or provide any required notifications (within the required notice periods) under any Assumed Contract prior to the Closing other than Pipe and Wire Crossing Agreements. Each party shall pay their own costs and expenses in connection with the STB Order and the Railway Operating Approvals. Nothing in this Agreement or the documents to be executed and delivered at the Closing shall be deemed to constitute an assignment or an attempt to assign any Permit, contract or other agreement to which G&W, MNBR, CPKC or CPRC is a party, if the attempted assignment thereof without the consent of the other party to such Permit, contract or other agreement would constitute a breach thereof or affect in any way the rights of G&W, MNBR, CPKC or CPRC thereunder; provided, however, that each party shall have the continuing obligation after the Closing to use Best Efforts to obtain all necessary consents to the assignment or transfer thereof for a period of one year following the Closing Date. If any such consent shall not be obtained at or prior to the Closing, or if an attempted assignment would be ineffective or would adversely affect G&W, MNBR's, CPKC's or CPRC's rights thereunder, the parties shall cooperate to provide for the transferee party thereunder the benefits under such Permit, contract or other agreement. To the extent that, from time to time after the Closing, G&W and/or CPKC shall identify MNBR Transferred Assets or Canadian Transferred Assets that are in the possession of G&W or its Affiliates, or CPKC or its Affiliates, as the case may be, or Excluded Assets that are in the possession of G&W or its Affiliates, or CPKC or its Affiliates, as the case may be, each

party shall use Best Efforts to take such action as is necessary for no additional consideration to put the other party in actual possession thereof and otherwise to put such party into the same economic position as if such action had been taken on or prior to the Closing Date.

5.05 Canadian Real Property Closing Procedure.

(a) All closing documents delivered pursuant to Section 5.02 and Section 5.03 of this Agreement in connection with the conveyance of the Canadian Real Property (collectively, the “**Canadian Real Property Conveyance Documents**”) shall be delivered on such reasonable trust conditions as are consistent with the terms of this Agreement and otherwise as would customarily be imposed in a similar transaction in the City of Calgary, Alberta, Canada.

(b) G&W acknowledges and agrees that if title to the Canadian Transferred Assets is subject to any financial Encumbrances which are required to be discharged by CPKC, CPKC will not be required to clear title before Closing but will be obligated to do so within a reasonable time following Closing and G&W will deliver the Canadian Real Property Conveyance Documents to CPKC’s solicitors on CPKC’s solicitors’ undertakings to discharge any such financial Encumbrances, which undertakings will be satisfactory to G&W’s solicitors and CPKC’s solicitors, each acting reasonably.

(c) Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that registration of the transfer(s) of land in respect of the Hoadley Subdivision Lands and the Scotford Transferred Lands at the Alberta Land Titles Office, as applicable, is not a condition or requirement of Closing. G&W may, in its discretion and at its sole cost, obtain a policy of title insurance to permit registration of the transfer(s) of land in respect of the Hoadley Subdivision Lands and the Scotford Transferred Lands at the Alberta Land Titles

Office, as applicable, post-Closing, to allow for release of the Canadian Real Property Conveyance Documents on Closing prior to such registration.

VI. ACCESS TO INFORMATION; CERTAIN RESTRICTIONS

6.01 Parties' Investigation. To the extent permitted by Law, each party shall, subject to Section 6.02 of this Agreement and at the requesting party's sole cost and risk, permit the other party and its counsel, accountants, consultants, and other authorized representatives and agents, to have reasonable access throughout the period prior to Closing to, and to make such reasonable investigations of (including surveys, structural and engineering investigations and, if consented to as provided for hereunder, environmental tests, studies and analyses), the assets, liabilities, property records, financial records, other books and records, surveys, maps, engineering records, leases, contracts, licenses, title information, filings and other records, operations, facilities and properties relating to the assets and properties to be acquired and liabilities to be assumed by the requesting party, including Contracts (subject in each case to confidentiality provisions and if so subject, then only in accordance with the terms of such provisions) as the requesting party may reasonably deem necessary or advisable in connection with this Agreement and the transactions contemplated hereby; *provided, however*, that the requesting party shall give prior written notice of its need for such access and investigations and all such access and investigations shall take place during normal business hours and shall not unreasonably interfere with the normal business of the other party; and *provided further* that no invasive testing, including sampling of soils or ground waters or components of any building or other structure, may occur without the prior written consent of the non-requesting party, which approval the non-requesting party will not unreasonably delay or withhold, and the requesting party and its agents shall not prior to the Closing communicate with any Governmental Authority concerning the results of any such sampling without the non-requesting party's advance written approval except to the extent required

by Law or regulation. For the avoidance of doubt, no investigation or receipt of information pursuant to this Section 6.01 (or otherwise) shall affect or be deemed to modify any representation, warranty or covenant of the non-requesting party herein or any Person's right to indemnification, or any other remedy, hereunder with respect to any breaches thereof.

6.02 Confidentiality of Information. The Confidentiality Agreement shall survive execution and delivery of this Agreement and the parties and their representatives shall continue to comply with the terms thereof. In the event this Agreement is terminated, the obligations under the Confidentiality Agreement shall survive after such termination for the term specified in the Confidentiality Agreement. From and after the Closing, the parties shall, and shall cause their respective Affiliates and representatives to, treat and hold as confidential any non-public information relating to the assets and properties transferred by such party (such information, the "**Post-Closing Confidential Information**") and refrain from using such Post-Closing Confidential Information except in connection with this Agreement, or as may otherwise be required by Law. In the event any of the foregoing Persons is required by Law to disclose any Post-Closing Confidential Information, such party shall promptly notify the other party in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with the party so notified to preserve the confidentiality of such information consistent with applicable Law.

6.03 Post-Signing Due Diligence and Right to Terminate.

(a) CPKC may examine title and conduct surveys or other inspections of title to the MNBR Real Property during the Title Examination Period. CPKC shall notify G&W on or before the first Business Day after the expiration of the Title Examination Period of any defects in title as determined by CPKC or other matters that are unacceptable to CPKC, existing of record as

of the effective date of this Agreement (each referred to herein as a "**MNBR Real Property Defect of Title**"). With respect to a MNBR Real Property Defect of Title that is not of record as of the effective date of this Agreement, but which arises on or prior to Closing, CPKC shall give G&W written notice of the same at or before Closing. If CPKC gives G&W notice of any MNBR Real Property Defect of Title in accordance with the terms set forth herein (each a "**CPKC's Objection Notice**"), G&W shall have fifteen (15) days from receipt of CPKC's Objection Notice (the "**G&W Response Deadline**") to notify CPKC whether G&W will agree to cause a MNBR Real Property Defect of Title to which CPKC has objected to be removed or corrected ("**G&W's Response Notice**"); provided, however, with respect to any MNBR Real Property Defects of Title arising after the effective date of this Agreement, G&W must use Best Efforts to remove or correct any such MNBR Real Property Defect of Title, and any voluntary MNBR Real Property Defect of Title or involuntary MNBR Real Property Defect of Title due to the filing of a tax lien or a mechanic's or materialmen's lien arising after the effective date of this Agreement in violation of G&W's representations, warranties and covenants set forth herein shall be a G&W default hereunder. If G&W fails to send G&W's Response Notice on or before the G&W Response Deadline, then G&W shall be deemed to have elected to not cause any objection to be removed or corrected as aforesaid. Except with respect to MNBR Real Property Defects of Title arising after the effective date of this Agreement and those MNBR Real Property Defects of Title described in Section 6.03(d), G&W shall have no obligation to take any action to cure any MNBR Real Property Defect of Title; provided, however, if G&W elects to cure, it shall proceed with good faith effort to secure such cure.

(b) If G&W elects (or is deemed to elect) to not cause any objection to be removed or corrected as aforesaid, CPKC may then, at its option (to be exercised on or before the

earlier of fifteen (15) days after (i) receipt of G&W's Response Notice or (ii) the G&W Response Deadline) either (A) terminate this Agreement, in which event this Agreement (except for provisions that are specifically identified as intended to survive such termination (including Section 4.01)), without further action of the parties, shall become null and void, and neither party shall have any further rights or obligations under this Agreement, or (B) elect to waive its objection to the MNBR Real Property Defect(s) of Title in the corresponding CPKC's Objection Notice, in which event each such MNBR Real Property Defect of Title shall be deemed to be a MNBR Permitted Encumbrance. If CPKC fails to terminate this Agreement within the fifteen (15) day period set forth in this paragraph, then CPKC shall be deemed to have elected to (X) waive its right to terminate the Agreement pursuant to this paragraph and (Y) waive its objection to the MNBR Real Property Defect(s) of Title in the corresponding CPKC's Objection Notice, in which event each such MNBR Real Property Defect of Title shall be deemed to be a MNBR Permitted Encumbrance.

(c) If G&W elects to cause any objection to be removed or corrected as aforesaid, then G&W shall use Best Efforts to cure any such MNBR Real Property Defects of Title and shall have a reasonable amount of time after receipt of CPKC's Objection Notice, not to exceed sixty (60) days, within which to remedy or cure any such MNBR Real Property Defect of Title and the Closing shall be extended. If G&W fails to cure the MNBR Real Property Defect of Title within the timeframe set forth above, CPKC may then, at its option (to be exercised on or before the fifteenth (15th) day after the expiration of G&W's cure period, as the same may have been extended), elect to (i) terminate this Agreement, in which event this Agreement (except for provisions that are specifically identified as intended to survive such termination (including Section 4.01))), without further action of the parties, shall become null and void, and neither party

shall have any further rights or obligations under this Agreement, (ii) accept title subject to the uncured MNBR Real Property Defect of Title, in which event such MNBR Real Property Defect of Title shall be deemed to be a MNBR Permitted Encumbrance, or (iii) if G&W has elected to cure, but requires more time to do so, extend the time period within which G&W is to remedy or cure for up to an additional thirty (30) days, and the Closing shall be extended as necessary. If CPKC fails to terminate this Agreement or to extend G&W's cure period within the fifteen (15) day period set forth in this paragraph, then CPKC shall be deemed to have elected to (X) waive its right to terminate the Agreement pursuant to this paragraph and (Y) waive its objection to the uncured MNBR Real Property Defect(s) of Title, in which event each such MNBR Real Property Defect of Title shall be deemed to be a MNBR Permitted Encumbrance.

(d) Notwithstanding anything to the contrary contained herein, in all events G&W shall be required to remove at or prior to Closing, and no CPKC's Objection Notice is required with respect to, (1) any mortgages encumbering the MNBR Transferred Assets or any other liens that secure monetary obligations (including construction, builder's, mechanic's or materialmen's liens) to the extent such liens are created by or expressly assumed by G&W or otherwise arise out of any work performed by or on behalf of G&W or material supplied for the MNBR Transferred Assets, and (2) any liens for past due taxes encumbering the MNBR Transferred Assets. Under no circumstances shall the items described in this subsection be deemed MNBR Permitted Encumbrances.

(e) G&W may examine title and conduct surveys or other inspections of title to the Canadian Real Property during the Title Examination Period. G&W shall notify CPKC on or before the first Business Day after the expiration of the Title Examination Period of any defects in title as determined by G&W or other matters that are unacceptable to G&W, existing of record as

of the effective date of this Agreement (each referred to herein as a "**Canadian Real Property Defect of Title**"). With respect to a Canadian Real Property Defect of Title that is not of record as of the effective date of this Agreement, but which arises on or prior to Closing, G&W shall give CPKC written notice of the same at or before Closing. If G&W gives CPKC notice of any Canadian Real Property Defect of Title in accordance with the terms set forth herein (each a "**G&W's Objection Notice**"), CPKC shall have fifteen (15) days from receipt of G&W's Objection Notice (the "**CPKC Response Deadline**") to notify G&W whether CPKC will agree to cause a Canadian Real Property Defect of Title to which G&W has objected to be removed or corrected ("**CPKC's Response Notice**"); *provided, however*, with respect to any Canadian Real Property Defects of Title arising after the effective date of this Agreement, CPKC must use Best Efforts to remove or correct and any such Canadian Real Property Defect of Title, and any voluntary Canadian Real Property Defect of Title or involuntary Canadian Real Property Defect of Title due to the filing of a tax lien or a mechanic's or materialmen's lien arising after the effective date of this Agreement in violation of CPKC's representations, warranties and covenants set forth herein shall be a CPKC default hereunder. If CPKC fails to send CPKC's Response Notice on or before the CPKC Response Deadline, then CPKC shall be deemed to have elected to not cause any objection to be removed or corrected as aforesaid. Except with respect to Canadian Real Property Defects of Title arising after the effective date of this Agreement and those Canadian Real Property Defects of Title described in Section 6.03(h), CPKC shall have no obligation to take any action to cure any Canadian Real Property Defect of Title; *provided, however*, if CPKC elects to cure, it shall proceed with good faith effort to secure such cure.

(f) If CPKC elects (or is deemed to elect) to not cause any objection to be removed or corrected as aforesaid, G&W may then, at its option (to be exercised on or before the

earlier of fifteen (15) days after (i) receipt of CPKC's Response Notice or (ii) the CPKC Response Deadline) either (A) terminate this Agreement, in which event this Agreement (except for provisions that are specifically identified as intended to survive such termination (including Section 4.01)), without further action of the parties, shall become null and void, and neither party shall have any further rights or obligations under this Agreement, or (B) elect to waive its objection to the Canadian Real Property Defect(s) of Title in the corresponding G&W's Objection Notice, in which event each such Canadian Real Property Defect of Title shall be deemed to be a Canadian Permitted Encumbrance. If G&W fails to terminate this Agreement within the fifteen (15) day period set forth in this paragraph, then G&W shall be deemed to have elected to (X) waive its right to terminate the Agreement pursuant to this paragraph and (Y) waive its objection to the Canadian Real Property Defect(s) of Title in the corresponding G&W's Objection Notice, in which event each such Canadian Real Property Defect of Title shall be deemed to be a Canadian Permitted Encumbrance.

(g) If CPKC elects to cause any objection to be removed or corrected as aforesaid, then CPKC shall use Best Efforts to cure any such Canadian Real Property Defects of Title and shall have a reasonable amount of time after receipt of G&W's Objection Notice, not to exceed sixty (60) days, within which to remedy or cure any such Canadian Real Property Defect of Title and the Closing shall be extended. If CPKC fails to cure the Canadian Real Property Defect of Title within the timeframe set forth above, G&W may then, at its option (to be exercised on or before the fifteenth (15th) day after the expiration of CPKC's cure period, as the same may have been extended), elect to (i) terminate this Agreement, in which event this Agreement (except for provisions that are specifically identified as intended to survive such termination (including Section 4.01))), without further action of the parties, shall become null and void, and neither party

shall have any further rights or obligations under this Agreement, (ii) accept title subject to the uncured Canadian Real Property Defect of Title, in which event such Canadian Real Property Defect of Title shall be deemed to be a Canadian Permitted Encumbrance, or (iii) if CPKC has elected to cure, but requires more time to do so, extend the time period within which CPKC is to remedy or cure for up to an additional thirty (30) days, and the Closing shall be extended as necessary. If G&W fails to terminate this Agreement or to extend CPKC's cure period within the fifteen (15) day period set forth in this paragraph, then G&W shall be deemed to have elected to (X) waive its right to terminate the Agreement pursuant to this paragraph and (Y) waive its objection to the uncured Canadian Real Property Defect(s) of Title, in which event each such Canadian Real Property Defect of Title shall be deemed to be a Canadian Permitted Encumbrance.

(h) Notwithstanding anything to the contrary contained herein, in all events CPKC shall be required to remove at or prior to Closing, and no G&W's Objection Notice is required with respect to, (1) any mortgages encumbering the Canadian Transferred Assets or any other liens that secure monetary obligations (including construction, builder's, mechanic's or materialmen's liens) to the extent such liens are created by or expressly assumed by CPKC or otherwise arise out of any work performed by or on behalf of CPKC or material supplied for the Canadian Transferred Assets, and (2) any liens for past due taxes encumbering the Canadian Transferred Assets. Under no circumstances shall the items described in this subsection be deemed Canadian Permitted Encumbrances.

VII. ADDITIONAL UNDERTAKINGS AND AGREEMENTS

7.01 Removal of Excluded Assets by G&W; Proprietary Locks; Emergency Information.

(a) G&W shall, and shall cause MNBR to, use its Best Efforts to remove any Excluded Assets not constituting real property located on, in or about the Rail Line prior to the

Closing, other than any Excluded Assets that MNBR requires on, in or about the Rail Line in order to exercise the retained rights described in Section 2.06 and set forth in the Retained Trackage Rights Agreement. For a period commencing on the Closing Date and ending on the date which is three (3) months thereafter, CPKC shall, and shall cause KCS to, permit G&W and MNBR to remove Excluded Assets not constituting real property located on, in or about the Rail Line not removed prior to the Closing. In connection therewith, CPKC shall, and shall cause KCS to, grant G&W and MNBR reasonable access during normal business hours and upon reasonable prior notice solely for the purpose of removing such property during such three (3) month period; provided that such removal or such access does not unreasonably interfere with the normal business of CPKC and KCS and provided that G&W, at G&W's sole cost and expense, shall promptly repair any damage resulting from such activities. Any such removal shall be performed in a commercially reasonable manner and without damage to any property of CPKC and KCS and in any other manner indicated by CPKC and KCS.

(b) For a period commencing on the Closing Date and ending on the date that is three (3) Business Days (unless an extension is agreed by the parties) thereafter, CPKC and KCS and G&W and MNBR shall jointly remove all switch and derail locks on the MNBR Transferred Assets and *provided* that G&W, at G&W's sole cost and expense, shall promptly repair any damage resulting from such activities.

(c) CPKC shall, and shall cause KCS to, promptly, and no later than fifteen (15) days after the Closing Date, replace all emergency notification information posted on the Rail Line, including grade crossings, with its own emergency contact information.

7.02 Removal of Excluded Assets by CPKC; Proprietary Locks; Emergency Information.

(a) CPKC shall, and shall cause CPRC to, use its Best Efforts to remove any Excluded Assets which do not constitute real property located on, in or about the Canadian Transferred Assets prior to the Closing. For a period commencing on the Closing Date and ending on the date which is three (3) months thereafter, G&W shall, and shall cause G&W Canadian Co. to, permit CPKC and CPRC to remove Excluded Assets which do not constitute real property located on, in or about the Canadian Transferred Assets not removed prior to the Closing. In connection therewith, G&W shall, and shall cause G&W Canadian Co. to, grant CPKC and CPRC reasonable access during normal business hours and upon reasonable prior notice solely for the purpose of removing such property during such three (3) month period; provided that such removal or such access does not unreasonably interfere with the normal business of G&W and G&W Canadian Co. and provided that CPKC, at CPKC's sole cost and expense, shall promptly repair any damage resulting from such activities. Any such removal shall be performed in a commercially reasonable manner and without damage to any property of G&W and G&W Canadian Co. and in any other manner indicated by G&W and G&W Canadian Co.

(b) For a period commencing on the Closing Date and ending on the date that is three (3) Business Days (unless an extension is agreed by the parties) thereafter, CPKC, G&W and G&W Canadian Co. shall jointly remove all switch and derail locks on the Canadian Transferred Assets and *provided* that CPKC, at CPKC's sole cost and expense, shall promptly repair any damage resulting from such activities.

(c) G&W shall, and shall cause G&W Canadian Co. to, promptly, and no later than fifteen (15) days after the Closing Date, replace all emergency notification information posted on the Canadian Transferred Assets, including grade crossings, with its own emergency contact information.

7.03 Post-Closing Access to Certain Records. From and after the Closing until the sixth anniversary of the Closing:

(a) Post-Closing Access to Certain Records Relating to the MNBR Transferred Assets, subject in each case to applicable Law:

(i) CPKC will use reasonable efforts to make available to G&W, at G&W's sole cost and expense, under reasonable conditions and upon G&W's reasonable, written request copies of any records of G&W transferred to CPKC pursuant to this Agreement necessary for G&W's accounting or tax purposes or the performance of obligations retained by G&W pursuant to this Agreement;

(ii) G&W will cooperate with CPKC to make available to CPKC, at CPKC's sole cost and expense, under reasonable conditions and upon CPKC's reasonable, written request, copies of any records of G&W that are required by CPKC in the ownership or operation of the MNBR Transferred Assets or the performance of obligations assumed by CPKC or otherwise relate to the MNBR Transferred Assets, including for tax or litigation purposes; and

(iii) For a period of two years following the Closing, G&W will (at its sole cost and expense) use its Best Efforts to locate and provide to CPKC books and records, documents, lists and written materials, including property records, surveys, maps, engineering records, leases, contracts, licenses, title information, filings and other records, and other materials necessary for the operation of the Rail Line and reasonably requested by CPKC.

(b) Post-Closing Access to Certain Records Relating to the Canadian Transferred Assets, subject in each case to applicable Law:

(i) G&W will use reasonable efforts to make available to CPKC, at CPKC's sole cost and expense, under reasonable conditions and upon CPKC's reasonable, written

request copies of any records of CPKC transferred to G&W pursuant to this Agreement necessary for CPKC's accounting or tax purposes or the performance of obligations retained by CPKC pursuant to this Agreement;

(ii) CPKC will cooperate with G&W to make available to G&W, at G&W's sole cost and expense, under reasonable conditions and upon G&W's reasonable, written request, copies of any records of CPKC that are required by G&W in the ownership or operation of the Canadian Transferred Assets or the performance of obligations assumed by G&W or otherwise relate to the Canadian Transferred Assets, including for tax or litigation purposes; and

(iii) For a period of two years following the Closing, CPKC will (at its sole cost and expense) use its Best Efforts to locate and provide to G&W books and records, documents, lists and written materials, including property records, surveys, maps, engineering records, leases, contracts, licenses, title information, filings and other records, and other materials necessary for the operation of the Canadian Transferred Assets and reasonably requested by G&W.

7.04 WARN Act. Each of G&W and CPKC shall comply and cause their respective subsidiaries and Affiliates to comply with the provisions of the WARN Act regarding "plant closings," "mass layoffs" or similar triggering events with respect to any employment losses (as defined in the WARN Act) affecting the employees of such party or their respective subsidiaries and Affiliates, that occur before 12:01 a.m. Chicago time on the day immediately following the Closing Date.

7.05 No Obligation to Hire Employees. Neither party nor any of its Affiliates shall have any obligation to hire any employees of the other party or any of its Affiliates in connection with the transactions to be consummated pursuant to this Agreement.

7.06 Labor Protection.

(a) From and after the Closing, G&W shall be responsible for all G&W Labor Protection. G&W shall not be responsible for any CPKC Labor Protection.

(b) From and after the Closing, CPKC shall be responsible for all CPKC Labor Protection. CPKC shall not be responsible for any MNBR Labor Protection.

7.07 Condition of Property.

(a) CPKC acknowledges and agrees that it has had or is entitled to under this Agreement the opportunity to inspect the MNBR Real Property and the other tangible property comprising the MNBR Transferred Assets and if the Closing occurs, CPKC shall conclusively be deemed to have accepted the physical condition of the MNBR Real Property and the other tangible property comprising the MNBR Transferred Assets in their present physical condition, and such property shall be conveyed at closing to CPKC "AS IS, WHERE IS, WITH ALL FAULTS", as more fully set forth in the introduction to Article VIII, but subject to any representations and warranties of G&W in this Agreement or any certificate or agreement delivered pursuant hereto, and subject to G&W's obligations with respect to MNBR Transferred Assets Excluded Obligations under this Agreement. The commitments in this Section 7.07 only apply to the physical condition of the MNBR Transferred Assets that could be discovered by an inspection of the property and do not apply to Environmental Liabilities.

(b) Subject to G&W's representations or warranties contained in this Agreement or any certificate or agreement delivered pursuant hereto and to MNBR Transferred Assets Excluded Obligations, CPKC's acceptance of title to the MNBR Real Property and the MNBR Transferred Assets shall represent CPKC's acknowledgment and agreement that: (i) G&W has not made nor has CPKC relied on any written or oral representation or warranty made by G&W, its agents or employees with respect to the condition or value of the MNBR Real Property

and the MNBR Transferred Assets, except as set forth herein or in any certificates or agreements contemplated by this Agreement or delivered pursuant to this Agreement and (ii) CPKC has had or is entitled under this Agreement to an adequate opportunity to inspect the condition of the MNBR Real Property and the MNBR Transferred Assets.

(c) G&W acknowledges and agrees that it has had or is entitled to under this Agreement the opportunity to inspect the Canadian Real Property and the other tangible property comprising the Canadian Transferred Assets and if the Closing occurs, G&W shall conclusively be deemed to have accepted the physical condition of the Canadian Real Property and the other tangible property comprising the Canadian Transferred Assets in their present physical condition, and such property shall be conveyed at closing to G&W "AS IS, WHERE IS, WITH ALL FAULTS", as more fully set forth in the introduction to Article IX, but subject to any representations and warranties of CPKC in this Agreement or any certificate or agreement delivered pursuant hereto, and subject to CPKC's obligations with respect to the Canadian Transferred Assets Excluded Obligations under this Agreement. The commitments in this Section 7.07 only apply to the physical condition of the Canadian Transferred Assets that could be discovered by an inspection of the property and do not apply to Environmental Liabilities.

(d) Subject to CPKC's representations or warranties contained in this Agreement or any certificate or agreement delivered pursuant hereto and to the Canadian Transferred Assets Excluded Obligations, G&W's acceptance of title to the Canadian Real Property and the Canadian Transferred Assets shall represent G&W's acknowledgment and agreement that: (i) CPKC has not made nor has G&W relied on any written or oral representation or warranty made by CPKC, its agents or employees with respect to the condition or value of the Canadian Real Property and the Canadian Transferred Assets, except as set forth herein or in any

certificates or agreements contemplated by this Agreement or delivered pursuant to this Agreement and (ii) G&W has had or is entitled under this Agreement to an adequate opportunity to inspect the condition of the Canadian Real Property and the Canadian Transferred Assets.

7.08 Trademarks and Logos.

(a) The parties agree that during the Permitted Use Period, CPKC and KCS shall be entitled to continue to use G&W's and MNBR's name, trademarks, logos and other source indicators ("**G&W Trademarks and Logos**") on any property included in the MNBR Transferred Assets solely as set forth in the license immediately hereafter, without any obligation on the part of CPKC or KCS to pay royalties or similar fees to G&W or MNBR relating to such use during the Permitted Use Period. Effective as of the Closing, G&W grants, and shall cause MNBR to grant, CPKC and KCS a limited, non-exclusive, non-transferable (except as permitted in Section 16.07), non-sublicensable, royalty free, fully paid up license to use the G&W Trademarks and Logos solely in the same manner and on the same materials as G&W has used such G&W Trademarks and Logos as of the Closing. "**Permitted Use Period**" means the one-year period following the Closing Date.

(b) CPKC agrees that it shall, and shall cause KCS to: (i) promptly after the Closing Date and during the Permitted Use Period, remove any of G&W Trademarks and Logos from the MNBR Transferred Assets; and (ii) immediately upon termination of the Permitted Use Period, cease and desist from all use of G&W Trademarks and Logos. CPKC and KCS shall not use any of the G&W Trademarks and Logos in any manner that might dilute, tarnish, disparage or reflect adversely on G&W or the G&W Trademarks and Logos. The parties agree that any goodwill that may be generated by CPKC's and/or KCS' use of the G&W Trademarks and Logos shall enure exclusively to G&W's benefit.

(c) The parties agree that during the Permitted Use Period, G&W and G&W Canadian Co, shall be entitled to continue to use CPKC's name, trademarks, logos and other source indicators ("**CPKC Trademarks and Logos**") on any property included in the Canadian Transferred Assets solely as set forth in the license immediately hereafter, without any obligation on the part of G&W or G&W Canadian Co. to pay royalties or similar fees to CPKC relating to such use during the Permitted Use Period. Effective as of the Closing, CPKC grants G&W and G&W Canadian Co. a limited, non-exclusive, non-transferable (except as permitted in Section 16.07), non-sublicensable, royalty free, fully paid up license solely in the same manner and on the same materials as CPKC and KCS have used such CPKC Trademarks and Logos as of the Closing.

(d) G&W agrees that it shall, and shall cause G&W Canadian Co. to: (i) promptly after the Closing Date and during the Permitted Use Period, remove any of CPKC's Trademarks and Logos from the Canadian Transferred Assets; and (ii) immediately upon termination of the Permitted Use Period, cease and desist from all use of CPKC's Trademarks and Logos. G&W and G&W Canadian Co. shall not use any of CPKC's Trademarks and Logos in any manner that might dilute, tarnish, disparage or reflect adversely on CPKC or CPKC's Trademarks and Logos. The parties agree that any goodwill that may be generated by G&W's and/or G&W Canadian Co.'s use of CPKC's Trademarks and Logos shall enure exclusively to CPKC's benefit.

(e) Notwithstanding the foregoing limitations set forth in this Section 7.08, each party may use the other party's name, trademarks, logos and other source indicators at all times after the Closing (i) as required by Law, (ii) in historical documentation not available to the public and (iii) for neutral non-trademark use to describe the transactions contemplated hereby (in accordance with Section 16.09 hereof).

7.09 Notification of Certain Matters; Cooperation.

(a) Prior to the Closing, G&W shall give prompt notice to CPKC, and CPKC shall give prompt notice to G&W, of the occurrence or non-occurrence of any event the occurrence or non-occurrence of which results in any representation or warranty contained in this Agreement or any certificate delivered pursuant hereto being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, then untrue or inaccurate in any respect) and any failure of G&W or CPKC, as the case may be, to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however*, that the delivery of any notice pursuant to this Section 7.09 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) Each of G&W and CPKC, as applicable, shall give prompt notice to the other of (i) any notice or other communication from any Person alleging that the approval of such Person is or may be required in connection with this Agreement or the consummation of the transactions contemplated hereby, (ii) any notice or other communication from any Governmental Authority in connection with this Agreement or the consummation of the transactions contemplated hereby, (iii) any claim relating to or involving or otherwise affecting such party that relates to this Agreement or the consummation of the transactions contemplated hereby or (iv) any fact, event, change, development, circumstance, condition or effect that is likely to delay or impede the ability of such party to consummate the transactions contemplated hereby or to fulfill their respective related obligations.

(c) Each of G&W and CPKC, as applicable, shall give prompt notice to the other of the occurrence of a material default or event by any party to an Assumed Contract that,

with notice or lapse of time or both, would become a material default under such Assumed Contract.

(d) Each party shall promptly advise the other parties hereto in writing of the occurrence of any claim of any Person that, if adversely determined, would reasonably be expected to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated hereby and of any other matter or circumstance that would reasonably be expected to prevent or materially delay the consummation of the transactions contemplated hereby.

(e) The parties will use commercially reasonable efforts to mitigate, reduce or eliminate any deed taxes, Transfer Taxes, sales taxes, use taxes, excise taxes and similar charges in connection with the transactions contemplated hereunder and to cooperate with the other party in providing any information and documentation that may be necessary to obtain such exemptions. Without limiting the foregoing, on or prior to the Closing Date, the parties will make all necessary filings and take any other steps necessary to claim exemption under any applicable "bulk sales" laws.

7.10 [Intentionally Omitted].

7.11 Overlap Contracts. [Except as set forth on **Schedule 7.11**], from and after the date hereof, CPKC and G&W shall use Best Efforts, including cooperating with the other parties, to reach agreement with the applicable counterparty to each Overlap Contract to enter into (x) a new Contract with either KCS or G&W Canadian Co., as the case may be, effective as of the Closing, relating to the nature and scope of such Overlap Contract on substantially identical terms to such Overlap Contracts as and to the extent they relate to the MNBR Transferred Assets or the Canadian Transferred Assets, respectively, and to release CPKC or G&W Canadian Co., as the case may be, from all liabilities and obligations thereunder to the extent not related to the MNBR Transferred

Assets or the Canadian Transferred Assets, respectively, and/or (y) an amendment or modification of such Overlap Contract, effective as of the Closing, reasonably necessary to effect the foregoing.

7.12 Maintenance of Rail Line. From and after Closing, for so long as KCS or an affiliate owns the Rail Line, KCS shall be responsible for the maintenance of the Rail Line, and any capital improvements required thereon, to at least the same condition as the Rail Line is in on the date of Closing (as documented by the parties). KCS shall have sole discretion and authority over such maintenance and the timing and amount of any expenditures and capital improvements; provided that if MNBR requests improvements that KCS declines to fund KCS shall make such improvements upon MNBR agreeing to fund such improvements in advance of expenditures.

7.13 No Solicitation. From the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to Article XIV, each of CPKC and G&W shall not, and shall direct and cause their subsidiaries not to, and shall use Best Efforts to cause their representatives and their subsidiaries' respective representatives not to, directly or indirectly, (a) solicit, initiate, induce the making of, or knowingly take any action to facilitate or encourage the submission of (including by way of furnishing or providing access to any non-public information) any Alternative Proposal to or the making of any proposal or offer that could reasonably be expected to lead to any Alternative Proposal, or (b) (i) conduct or engage in any discussions or negotiations with, disclose any non-public information in connection with an Alternative Proposal relating to, with respect to G&W, the MNBR Transferred Assets or, with respect to CPKC, the Canadian Transferred Assets, or (ii) approve or recommend, or propose to approve or recommend, or execute or enter into any agreement in principle, letter of intent, term sheet, acquisition agreement, merger agreement, asset purchase agreement, option agreement, joint venture agreement, partnership agreement, or other Contract for an Alternative Proposal relating to, with

respect to G&W, the MNBR Transferred Assets or, with respect to CPKC, the Canadian Transferred Assets.

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VIII. G&W'S REPRESENTATIONS AND WARRANTIES

THE SALE AND PURCHASE AND THE OTHER TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY G&W, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF G&W SET FORTH IN THIS AGREEMENT OR ANY CERTIFICATE OR AGREEMENT DELIVERED PURSUANT HERETO. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF G&W SET FORTH IN THIS AGREEMENT OR ANY CERTIFICATE OR AGREEMENT DELIVERED PURSUANT HERETO, G&W DISCLAIMS ANY REPRESENTATION OR

WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS. CPKC AND G&W AGREE THAT THE REAL PROPERTY AND THE PERSONAL PROPERTY INCLUDED IN THE MNBR TRANSFERRED ASSETS ARE BEING CONVEYED "AS IS, WHERE IS, WITH ALL FAULTS" WITHOUT WARRANTY OR REPRESENTATION OF TITLE, EXCEPT FOR REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY CERTIFICATE DELIVERED PURSUANT HERETO.

Except as set forth in the corresponding section of the disclosure schedule delivered by G&W to CPKC concurrently herewith (the "**G&W Schedules**"), G&W represents and warrants to CPKC as of the date hereof and as of the Closing Date as follows:

8.01 Organization and Authority.

(a) Each G&W Entity is duly organized and existing and in good standing under the Laws of jurisdiction of formation. Each G&W Entity is duly qualified to do business in, and is in good standing under the Laws of, each other jurisdiction in which the ownership or lease of its property or the nature or conduct of its business or both makes such qualification necessary, except where the failure to be so qualified would not have a G&W Material Adverse Effect.

(b) Each G&W Entity has the power and authority to own, lease and operate its assets and properties, and to carry on its business related thereto as now conducted.

(c) The execution, delivery and performance by G&W of this Agreement and of all other agreements and instruments called for hereunder, and the execution, delivery and performance by each other G&W Entity of any agreements or instruments to which it will be a party, and the consummation by G&W Entities of the transactions contemplated by this Agreement, and all such other agreements and instruments called for hereunder, have been duly

and validly authorized by all necessary action of the board of directors or other governing body of the G&W Entities and by any other necessary corporate or shareholder or member action of the G&W Entities under applicable Law, the organizational documents of the G&W Entities and otherwise (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). Assuming the due authorization, execution and delivery of this Agreement by CPKC, this Agreement constitutes the legal, valid and binding obligation of G&W, and upon execution and delivery each other agreement and instrument called for hereunder will constitute, the legal, valid and binding obligation of the applicable G&W Entity. This Agreement is enforceable against G&W in accordance with its terms, and upon execution and delivery each other agreement and instrument called for hereunder will be enforceable against the applicable G&W Entity in accordance with its terms, subject in each case to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

8.02 No Conflicts; Consents of Third Parties. Except for those authorizations, consents, and approvals described in Schedule 8.02, the execution, delivery and performance of this Agreement by G&W and each other agreement and instrument called for hereunder by the applicable G&W Entity will not (a) conflict with the organizational documents of the applicable G&W Entity and will not conflict with, or result in a breach or termination of or constitute a default under, any lease, agreement, commitment, or other instrument (or create an event which, with notice or lapse of time or both, would constitute a default), result in the acceleration, termination or maturity of, create in any party the right to accelerate, terminate, modify, amend or cancel, or

result in the loss of a benefit or increase in any fee, liability, or other obligation under, any Assumed Contract or any lease, agreement, commitment, or other instrument other than an Immaterial Contract, or any Order, judgment, or decree, to which any G&W Entity is bound or to which the MNBR Transferred Assets or any portion thereof is subject; provided that with respect to Immaterial Contracts the foregoing representation shall not be breached unless the failure to obtain such consent would have a G&W Material Adverse Effect, (b) constitute a violation by any G&W Entity of any Law or regulation applicable to it, or (c) result in the creation of any material Encumbrance upon any of the MNBR Transferred Assets. No authorization, consent, or approval of, or designation, declaration or filing with, any Governmental Authority or any other Person is required on the part of any G&W Entity in connection with the execution, delivery, and performance of this Agreement and each other agreement and instrument called for hereunder, except as described in **Schedule 8.02**, except for such actions with respect to Governmental Authorities which if not obtained, will not individually or in the aggregate be material.

8.03 **Licenses and Permits.** (i) Each G&W Entity has all Permits, licenses, franchises, operating authorizations, and approvals from Governmental Authorities required to own, operate and use the MNBR Transferred Assets lawfully in all material respects and in the manner in which they are now operated, and none thereof is invalid or in default in any material respect, there have been no violations thereof, and there are no proceedings whether actual, pending or, to the knowledge of G&W, threatened, to alter, revoke or limit any thereof; (ii) to G&W's knowledge there is no reasonable basis for any such proceeding or for any modification of any such Permits, licenses, franchises, operating authorizations, or approvals that could adversely affect the ownership, operation or use of the MNBR Transferred Assets in any material respect; and (iii) to

G&W's knowledge, there is no reasonable basis for any such Permits, licenses, franchises, operating authorizations or approvals not to be transferred to KCS in the ordinary course.

8.04 Title to MNBR Transferred Assets.

(a) MNBR owns or otherwise possesses, and the MNBR Transferred Assets include, sufficient real and personal property rights and interests (including trackage and operating rights), including the rail lines depicted on the maps referenced in **Exhibit A**, and the adjacent shops, buildings and other rail facility appurtenances thereto (collectively, the "**MNBR Rail Facilities**") to conduct and, as of the Closing, to permit KCS to conduct, rail freight operations on and over the MNBR Rail Facilities as such operations are currently conducted by MNBR, subject in all cases only to MNBR Permitted Encumbrances. There are no Encumbrances which would affect in any material respect its interest in the MNBR Transferred Assets so as to materially and adversely affect CPKC's ability to conduct operations with the MNBR Transferred Assets following the Closing as currently conducted. Furthermore, subject to the Operative Documents and subject to the exclusion of the Excluded Assets, rolling stock and general corporate, administrative, sales, dispatch and like functions, the MNBR Transferred Assets comprise the assets necessary, in all material respects, to operate the Rail Line as currently operated and consistent with past practice with respect to revenue generation, trackage rights, interchange arrangements and other rail transportation arrangements.

(b) Except as Disclosed in **Schedule 8.04(b)**, there are no parties other than MNBR in possession of the Rail Line and MNBR has not subleased, licensed or otherwise granted any party the right to use or occupy the Rail Line or any portion thereof other than the rights of customers in the ordinary course of business.

(c) There are no pending or, to the Knowledge of G&W, any threatened condemnation, eminent domain or administrative actions affecting the Rail Line or any portion thereof, except as would not reasonably be expected to have a G&W Material Adverse Effect.

(d) All buildings, structures, improvements, and fixtures located at the Rail Line, including all mechanical, electrical and other systems, have been maintained in accordance with normal industry practice, are in good operating condition and repair, and are suitable for the purposes for which they are currently used, except as would not reasonably be expected to have a G&W Material Adverse Effect.

8.05 Employment and Employee Benefit Matters.

(a) G&W and each ERISA Affiliate of G&W have fulfilled their obligations, if any, under the minimum funding standards of ERISA and the Code with respect to each G&W Plan and are in compliance in all material respects with the applicable provisions of ERISA and the Code with respect to each G&W Plan, except where such noncompliance would not have a G&W Material Adverse Effect. No lien has been imposed under ERISA or the Code with respect to any of the MNBR Transferred Assets, nor has any event occurred which would reasonably be expected to result in the imposition of such a lien. No circumstance exists that could reasonably be expected to result in the imposition of liability on CPKC or KCS under Title IV of ERISA with respect to any G&W Plan in connection with the consummation of the transactions contemplated by this Agreement.

(b) G&W shall be solely responsible for all wages, medical and hospitalization benefits, sick pay, vacation pay, sickness and accident benefits, severance benefits, short and long term disability benefits, life insurance (and any other death benefits), pension benefits and other deferred compensation, and any and all other benefits under all employee benefit plans (as that

term is defined in Section 3(3) of ERISA), in effect covering one or more of G&W's or MNBR's employees as of or prior to the Closing Date and thereafter.

(c) Except as disclosed in **Schedule 8.05(c)**:

(i) As of the date hereof, MNBR is not a party to, or bound by, any collective bargaining agreement, memorandum of understanding or other agreement or understanding with any labor union or labor organization;

(ii) As of the date hereof, there are no unfair labor practice proceedings pending or, to the knowledge of G&W, threatened, against MNBR;

(iii) As of the date hereof, to the knowledge of G&W, no labor union or labor organization is presently seeking, is threatening to seek or has sought since January 1, 2019, to represent or organize any of G&W's employees;

(iv) MNBR has not experienced any labor strike, walkout, lockout, concerted slowdown or work stoppage or other material labor dispute since January 1, 2019 and, to the knowledge of G&W, none are threatened; and

(v) Each person who performs services for MNBR has been, and is, properly classified as an employee or independent contractor under applicable Law, except where such non-compliance would not have a G&W Material Adverse Effect.

(d) CPKC and KCS will not have any obligation to participate in or to continue or to contribute to any employee contractual arrangement or employee benefit plan (as that term is defined in Section 3(3) of ERISA) maintained by or for MNBR, including pension plans, medical plans, insurance plans, severance plans and welfare plans.

8.06 **Litigation**. Except as disclosed in **Schedule 8.06** attached hereto, there is no action, suit, claim, arbitration or litigation pending or, to the knowledge of G&W, any investigation

pending, or with respect to any of the foregoing, to the knowledge of G&W, threatened against or affecting or involving the MNBR Transferred Assets, or the business, operations, value or use thereof or related thereto, or G&W's ability to perform its obligations under this Agreement, or any of the agreements and instruments called for hereunder, at law or in equity, before or by any court, arbitrator or other Governmental Authority which if determined adversely would have a G&W Material Adverse Effect upon the MNBR Transferred Assets.

8.07 Compliance with Law.

(a) Except as set forth in **Schedule 8.07(a)**, the MNBR Transferred Assets are operated, and since January 1, 2019, have been operated, in all material respects in compliance with all applicable Laws. All communications towers are in compliance, in all material respects, with applicable requirements of the Federal Communications Commission and the Federal Aviation Administration rules and regulations.

(b) **Schedule 8.07(b)** lists:

(i) as of the date hereof all citations, notices of violations or notices of investigation resulting in any material liability (or alleging any material liability if no final determination of liability has been made) to or involving the business or operations of the Rail Line since January 1, 2019; and

(ii) as of the date hereof, all slow orders currently in effect applicable to any MNBR Transferred Assets operated by G&W.

8.08 Absence of Certain Changes.

(a) Except as set forth on **Schedule 8.08**, since December 31, 2022, and through the date of this Agreement, MNBR has operated the MNBR Transferred Assets in the ordinary course and substantially consistent with past practice in all material respects.

(b) Since December 31, 2022, no event, change or circumstance has occurred, which, individually or in the aggregate, has had, or would be reasonably expected to have a G&W Material Adverse Effect on the MNBR Transferred Assets.

8.09 List of Agreements. **Schedules 2.01(a)(ii), 2.01(a)(iv) and 2.01(a)(vi)** set forth a complete list of all material MNBR Real Property Interests of MNBR (other than Excluded Assets, Immaterial Contracts and Overlap Contracts) and other Assumed Contracts as of the date hereof, which relate to the operation of the Rail Line, or the MNBR Transferred Assets or by which any MNBR Transferred Assets are bound, and which:

(i) provide for payments by or to MNBR of more than \${{ [REDACTED] }} per year;

(ii) grant another party the right to use all or any material portion of the Rail Line (including yards(s) and other facilities) or the right to serve industries located on the Rail Line;

(iii) grant G&W the right to use all or any material portion of the rail line, yard(s) or other facilities of another rail common carrier which relate primarily to the Rail Line;

(iv) relate to trackage rights, haulage, interchange, joint facility, switching and similar agreements which relate to the Rail Line;

(v) limits or purports to limit the ability of MNBR (or any of its Affiliates) to compete in any line of business or with any Person or in any geographic area or during any period of time which would adversely impact KCS;

(vi) contains a most favored nation (or similar provision) or exclusivity provision which would adversely impact KCS;

(vii) are leases or subleases of real property which relate to the Rail Line and involve more than 5,000 square feet; or

(viii) includes a right of first refusal or right of first offer over any MNBR Transferred Asset.

8.10 Status of Agreements. Except for any breach or default which may result from the assignment of the MNBR Transferred Assets pursuant to this Agreement without the consent of parties to Contracts included in the MNBR Transferred Assets, each of the Assumed Contracts is presently in full force and effect in accordance with its terms, to the knowledge of G&W there has been and is continuing no material breach by MNBR of any of the provisions of any of the Assumed Contracts, and to the knowledge of G&W, there has been and is continuing no material breach by any other party to any of those Assumed Contracts of any of the provisions of any of the Assumed Contracts and no condition exists that, with notice or lapse of time or both, would constitute a material default by MNBR or, to the knowledge of G&W, any other party to any of those Assumed Contracts. G&W has delivered or made available to CPKC a correct and complete copy of each written Assumed Contract. Each Assumed Contract is legal, valid, binding, enforceable, and in full force and effect and will continue to be legal, valid, binding, enforceable, and in full force and effect without any modification that would interfere in any material respect with the operation of the MNBR Transferred Assets as currently conducted immediately following the consummation of and after giving effect to the transactions contemplated by this Agreement. MNBR has not received any notice of the intention of any party to terminate any material Assumed Contract, whether as a termination for convenience or for default of MNBR thereunder, except for such notices given in the ordinary course of business or as a result of the expiration of a contract

as a result of its stated term. Except as set forth on **Schedule 8.10**, MNBR and/or its Affiliates have satisfied all currently due amounts due under any Assumed Contract.

8.11 Taxes and Assessments.

(i) None of the MNBR Transferred Assets is tax exempt use property within the meaning of Section 168(h) of the Code. None of the MNBR Transferred Assets is property that is or will be required to be treated as being owned by another Person pursuant to provisions of Section 168(f) of the Code.

(ii) Except for any Taxes, assessments, fees or other charges (including any interest or penalties) due to any Governmental Authority that MNBR in good faith is contesting or will contest through appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, MNBR has paid all material Taxes, assessments, fees or other charges (including any interest or penalties) due to any Taxing Authority to be paid with respect to the MNBR Transferred Assets which are due and payable.

(iii) All material Tax Returns required to be filed by MNBR with respect to the MNBR Transferred Assets have been or will be filed when due (taking into account applicable extensions) in accordance with all applicable Laws.

(iv) There are no Encumbrances for any Tax on the MNBR Transferred Assets except for Taxes not yet due and payable.

8.12 Hazardous Materials.

(a) Except for the Disclosed Environmental Conditions and except as described in **Schedule 8.12(a)**: (i) there are no underground or aboveground storage tanks in, on or under the Rail Line, including any presently owned or operated MNBR Real Property that MNBR uses or, to G&W's knowledge, has used, and to G&W's knowledge there are no other underground or

aboveground storage tanks in, on or under such locations; (ii) MNBR has not caused to be present, released, or exacerbated the condition of any Hazardous Substances that are present at or affecting any of the MNBR Transferred Assets, and to G&W's knowledge, there has been no release of Hazardous Substances in contravention of Environmental Laws in, on or under the MNBR Transferred Assets, and Hazardous Substances are not otherwise present at or affecting any of the MNBR Transferred Assets, in any case in a manner that is a violation of Environmental Laws or any Permit or that reasonably could be expected to result in a material liability to the owner or operator of the MNBR Transferred Assets or to interfere materially with the lawful operation of the MNBR Transferred Assets in the manner in which they are currently operated and have been operated since the beginning of the most recently completed fiscal year; and (iii) MNBR has not received from any Person notice of or claim with respect to any Environmental Liabilities relating to the MNBR Transferred Assets or a written request for information pursuant to Environmental Laws, which, remains pending or unresolved or is the source of ongoing obligations or requirements.

(b) To G&W's knowledge and without representation or warranty as to accuracy or completeness (other than, with respect to completeness, to the extent such document is in G&W's or its Affiliates' possession or reasonably within its control), G&W has made available to CPKC all reports, assessments, studies, audits, records, sampling data, site assessments and other documents containing material and non-privileged information concerning Hazardous Substances on, in, under, at or affecting or from the MNBR Transferred Assets that are within G&W's possession or reasonably within its control.

(c) The representations in this Section 8.12, and in Sections 8.02, 8.03, 8.06, 8.07, 8.08, 8.09, 8.10, and 8.14, are the exclusive representations of G&W with respect to

environmental matters, Hazardous Substances, Environmental Laws, and any Environmental Liabilities related to the Rail Line.

8.13 MNBR Real Property.

(a) **Schedule 8.13(a)** sets forth a list of all leased real property used or occupied by MNBR in connection with the Rail Line pursuant to written agreements (the “**MNBR Real Property Leases**”). Each MNBR Real Property Lease constitutes the legal, valid and binding obligation of MNBR, enforceable against MNBR in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws from time to time in effect affecting the enforcement of creditors’ rights generally or by general principles of equity. All rent and other sums and charges payable by MNBR under each MNBR Real Property Lease have been duly paid. Neither MNBR nor any other party to any MNBR Real Property Lease, is in breach or default in any material respect in complying with any provisions thereof. No notice of default or termination under any MNBR Real Property Lease has been received by MNBR and no event has occurred which with or without notice or lapse of time, or both, would constitute a breach or default by MNBR that would interfere in any material respect with the operation or conduct of the Rail Line as currently conducted, or permit termination, modification, or acceleration under any MNBR Real Property Lease.

8.14 Undisclosed Liabilities. **Schedule [8.14]** sets forth a list of all liabilities, obligations and commitments, whether fixed, contingent, accrued or unaccrued or otherwise, related to the MNBR Transferred Assets in excess of \${{ [REDACTED] }} individually.

IX. CPKC’S REPRESENTATIONS AND WARRANTIES

THE SALE AND PURCHASE AND THE OTHER TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY CPKC, EXCEPT FOR THE

REPRESENTATIONS AND WARRANTIES OF CPKC SET FORTH IN THIS AGREEMENT OR ANY CERTIFICATE OR AGREEMENT DELIVERED PURSUANT HERETO. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF CPKC SET FORTH IN THIS AGREEMENT OR ANY CERTIFICATE OR AGREEMENT DELIVERED PURSUANT HERETO, CPKC DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS. CPKC AND G&W AGREE THAT THE REAL PROPERTY AND THE PERSONAL PROPERTY INCLUDED IN THE [CANADIAN TRANSFERRED ASSETS] ARE BEING CONVEYED “AS IS, WHERE IS, WITH ALL FAULTS” WITHOUT WARRANTY OR REPRESENTATION OF TITLE, EXCEPT FOR REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY CERTIFICATE DELIVERED PURSUANT HERETO.

Except as set forth in the corresponding section of the disclosure schedule delivered by CPKC to G&W concurrently herewith (the “**CPKC Schedules**”), CPKC represents and warrants to G&W as of the date hereof and as of the Closing Date as follows:

9.01 Organization and Authority.

(a) Each CPKC Entity is duly organized and existing and in good standing under the Laws of jurisdiction of formation. Each CPKC Entity is duly qualified to do business in, and is in good standing under the Laws of, each other jurisdiction in which the ownership or lease of its property or the nature or conduct of its business or both makes such qualification

necessary, except where the failure to be so qualified would not have a CPKC Material Adverse Effect.

(b) Each CPKC Entity has the power and authority to own, lease and operate its assets and properties, and to carry on its business related thereto as now conducted.

(c) The execution, delivery and performance by CPKC of this Agreement and of all other agreements and instruments called for hereunder, and the execution, delivery and performance by each other CPKC Entity of any agreements or instruments to which it will be a party, and the consummation by CPKC Entities of the transactions contemplated by this Agreement, and all such other agreements and instruments called for hereunder, have been duly and validly authorized by all necessary action of the board of directors or other governing body of the CPKC Entities and by any other necessary corporate or shareholder or member action of the CPKC Entities under applicable Law, the organizational documents of the CPKC Entities and otherwise (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). Assuming the due authorization, execution and delivery of this Agreement by G&W, this Agreement constitutes the legal, valid and binding obligation of CPKC, and upon execution and delivery each other agreement and instrument called for hereunder will constitute, the legal, valid and binding obligation of the applicable CPKC Entity. This Agreement is enforceable against CPKC in accordance with its terms, and upon execution and delivery each other agreement and instrument called for hereunder will be enforceable against the applicable G&W Entity in accordance with its terms, subject in each case to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of

equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

9.02 No Conflicts; Consents of Third Parties. Except for those authorizations, consents, and approvals described in **Schedule 9.02**, the execution, delivery and performance of this Agreement by CPKC and each other agreement and instrument called for hereunder by the applicable CPKC Entity will not (a) conflict with the organizational documents of the applicable CPKC Entity and will not conflict with, or result in a breach or termination of or constitute a default under, any lease, agreement, commitment, or other instrument (or create an event which, with notice or lapse of time or both, would constitute a default) under, result in the acceleration, termination or maturity of, create in any party the right to accelerate, terminate, modify, amend or cancel, or result in the loss of a benefit or increase in any fee, liability, or other obligation under, any Assumed Contract or any lease, agreement, commitment, or other instrument other than an Immaterial Contract, or any Order, judgment, or decree, to which any CPKC Entity is bound or to which the Canadian Transferred Assets or any portion thereof is subject, provided that with respect to Immaterial Contracts the foregoing representation shall not be breached unless the failure to obtain such consent would have a CPKC Material Adverse Effect, (b) constitute a violation by any CPKC Entity of any Law or regulation applicable to it, or (c) result in the creation of any material Encumbrance upon any of the Canadian Transferred Assets. No authorization, consent, or approval of, or designation, declaration or filing with, any Governmental Authority or any other Person is required on the part of any CPKC Entity in connection with the execution, delivery, and performance of this Agreement and each other agreement and instrument called for hereunder, except as described in **Schedule 9.02**, except for such actions with respect to Governmental Authorities which if not obtained, will not individually or in the aggregate be material.

9.03 Licenses and Permits. (i) Each CPKC Entity has all Permits, licenses, franchises, operating authorizations, and approvals from Governmental Authorities required to own, operate and use the Canadian Transferred Assets lawfully in all material respects and in the manner in which they are now operated, and none thereof is invalid or in default in any material respect, there have been no violations thereof, and there are no proceedings whether actual, pending or, to the knowledge of CPKC, threatened, to alter, revoke or limit any thereof; (ii) to CPKC's knowledge, there is no reasonable basis for any such proceeding or for any modification of any such Permits, licenses, franchises, operating authorizations, or approvals that could adversely affect the ownership, operation or use of the Canadian Transferred Assets in any material respect; and (iii) to CPKC's knowledge, there is no reasonable basis for any such Permits, licenses, franchises, operating authorizations or approvals not to be transferred to G&W Canadian Co. in the ordinary course.

9.04 Title to Hoadley Subdivision Assets.

(a) CPRC owns or otherwise possesses, and the Hoadley Subdivision Assets include, sufficient real and personal property rights and interests (including trackage and operating rights), including the rail lines depicted on the maps referenced in Exhibit [●], and the adjacent shops, buildings and other rail facility appurtenances thereto (collectively, the “Hoadley Rail Facilities”) to conduct and, as of the Closing, to permit Hoadley Newco to conduct, rail freight operations on and over the Hoadley Rail Facilities as such operations are currently conducted by CPRC, subject in all cases only to the Canadian Permitted Encumbrances. There are no Encumbrances which would affect in any material respect its interest in the Hoadley Subdivision Assets so as to materially and adversely affect Hoadley Newco's ability to conduct operations with the Hoadley Subdivision Assets following the Closing as currently conducted. Furthermore,

subject to the Operative Documents and subject to the exclusion of the Excluded Assets, rolling stock and general corporate, administrative, sales, dispatch and like functions, the Hoadley Subdivision Assets comprise the assets necessary, in all material respects, to operate the Hoadley Subdivision Assets as currently operated and consistent with past practice with respect to revenue generation, trackage rights, interchange arrangements and other rail transportation arrangements.

(b) Except as Disclosed in **Schedule 9.04(b)**, there are no parties other than CPRC in possession of the Hoadley Rail Facilities and CPRC has not subleased, licensed or otherwise granted any party the right to use or occupy the Hoadley Rail Facilities or any portion thereof other than the rights of customers in the ordinary course of business.

(c) There are no pending or, to the Knowledge of CPKC, any threatened condemnation, eminent domain or administrative actions affecting the Hoadley Rail Facilities or any portion thereof, except as would not reasonably be expected to have a CPKC Material Adverse Effect.

(d) All buildings, structures, improvements, and fixtures located at the Hoadley Rail Facilities, including all mechanical, electrical and other systems, have been maintained in accordance with normal industry practice, are in good operating condition and repair, and are suitable for the purposes for which they are currently used, except as would not reasonably be expected to have a CPKC Material Adverse Effect.

9.05 Title to Scotford Assets.

(a) CPRC owns or otherwise possesses the Scotford Assets, subject in all cases only to the Canadian Permitted Encumbrances.

(b) Except as Disclosed in **Schedule 9.05(b)**, there are no parties other than CPRC in possession of the Scotford Assets and CPRC has not subleased, licensed or otherwise

granted any party the right to use or occupy the Scotford Assets or any portion thereof other than the rights of customers in the ordinary course of business.

(c) There are no pending or, to the Knowledge of CPRC, any threatened condemnation, eminent domain or administrative actions affecting the Scotford Assets or any portion thereof, except as would not reasonably be expected to have a CPKC Material Adverse Effect.

(d) The Scotford Transferred Lands consist of vacant real property, and there are no buildings, structures, improvements or fixtures of any kind located thereon.

9.06 Employment and Employee Benefit Matters.

(a) CPKC and each ERISA Affiliate of CPKC have fulfilled their obligations, if any, under the minimum funding standards of ERISA and the Code with respect to each CPKC Plan and are in compliance in all material respects with the applicable provisions of ERISA and the Code with respect to each CPKC Plan, except where such noncompliance would not have a CPKC Material Adverse Effect. No lien has been imposed under ERISA or the Code with respect to any of the Canadian Transferred Assets, nor has any event occurred which could reasonably be expected to result in the imposition of such a lien. No circumstance exists that could reasonably be expected to result in the imposition of liability on G&W or G&W Canadian Co. under Title IV of ERISA with respect to any CPKC Plan in connection with the consummation of the transactions contemplated by this Agreement.

(b) CPKC shall be solely responsible for all wages, medical and hospitalization benefits, sick pay, vacation pay, sickness and accident benefits, severance benefits, short and long term disability benefits, life insurance (and any other death benefits), pension benefits and other deferred compensation, and any and all other benefits under all employee benefit plans (as that

term is defined in Section 3(3) of ERISA), in effect covering one or more of CPKC's or CPRC's employees as of or prior to the Closing Date and thereafter.

(c) Except as disclosed in **Schedule 9.06(I)**:

(i) As of the date hereof, neither CPKC nor any of its subsidiaries or Affiliates (relating to the Canadian Transferred Assets) is a party to, or bound by, any collective bargaining agreement, memorandum of understanding or other agreement or understanding with any labor union or labor organization;

(ii) As of the date hereof, there are no unfair labor practice proceedings pending or, to CPKC's knowledge, threatened, against CPKC or any of its subsidiaries or Affiliates (relating to the Canadian Transferred Assets);

(iii) As of the date hereof, to CPKC's knowledge, no labor union or labor organization is presently seeking, is threatening to seek or has sought since January 1, 2019, to represent or organize employees CPKC or any of its subsidiaries or Affiliates (relating to the Canadian Transferred Assets);

(iv) Neither CPKC nor any of its subsidiaries or Affiliates (relating to the Canadian Transferred Assets) has experienced any labor strike, walkout, lockout, concerted slowdown or work stoppage or other material labor dispute since January 1, 2019 and, to CPKC's knowledge, none are threatened; and

(v) Each person who performs services for CPKC or any of its subsidiaries and Affiliates (relating to the Canadian Transferred Assets) has been, and is, properly classified as an employee or independent contractor under applicable Law, except where such non-compliance would not have a CPKC Material Adverse Effect.

(d) G&W and G&W Canadian Co. will not have any obligation to participate in or to continue or to contribute to any employee contractual arrangement or employee benefit plan (as that term is defined in Section 3(3) of ERISA) maintained by or for CPRC, including pension plans, medical plans, insurance plans, severance plans and welfare plans.

9.07 Litigation. Except as disclosed in **Schedule 9.07** attached hereto, there is no action, suit, claim, arbitration or litigation pending or, to the knowledge of CPKC, any investigation pending, or with respect to any of the foregoing, to the knowledge of CPKC, threatened against or affecting or involving the Canadian Transferred Assets, or the business, operations, value or use thereof or related thereto, or CPKC's ability to perform its obligations under this Agreement, or any of the agreements and instruments called for hereunder, at law or in equity, before or by any court, arbitrator or other Governmental Authority which if determined adversely would have a CPKC Material Adverse Effect upon the Canadian Transferred Assets.

9.08 Compliance with Law.

(a) Except as set forth in **Schedule 9.08(a)**, the Canadian Transferred Assets are operated, and since January 1, 2019 have been operated, in all material respects in compliance with all applicable Laws.

(b) **Schedule 9.08(b)** lists:

(i) as of the date hereof all citations, notices of violations or notices of investigation resulting in any material liability (or alleging any material liability if no final determination of liability has been made) to or involving the business or operations of the Canadian Transferred Assets since January 1, 2019; and

(ii) as of the date hereof, all slow orders currently in effect applicable to any Canadian Transferred Assets operated by G&W.

9.09 Absence of Certain Changes.

(a) Except as set forth on **Schedule 9.09**, since December 31, 2022 and through the date of this Agreement CPKC has operated the Canadian Transferred Assets in the ordinary course and substantially consistent with past practice in all material respects.

(b) Since December 31, 2022, no event, change or circumstance has occurred, which, individually or in the aggregate, has had, or would be reasonably expected to have a CPKC Material Adverse Effect on the Canadian Transferred Assets.

9.10 List of Agreements. **Schedules 3.01(a)(i)(b)**, **3.01(a)(i)(d)** and **3.01(a)(i)(f)**, and the contracts referenced in Section [●], set forth a complete list of all material Canadian Real Property Interests of CPRC (other than Excluded Assets, Immaterial Contracts and Overlap Contracts) and other Assumed Contracts as of the date hereof, which relate to the operation of the Hoadley Subdivision, the Scotford Transferred Lands or any other Canadian Transferred Assets, or by which any such Canadian Transferred Assets are bound, and which:

(i) provide for payments by or to CPKC of more than C\${{ [REDACTED] }} per year;

(ii) grant another party the right to use all or any material portion of the Hoadley Subdivision (including yards(s) and other facilities) or the right to serve industries located on the Hoadley Subdivision;

(iii) grant CPRC the right to use all or any material portion of the rail line, yard(s) or other facilities of another rail common carrier which relate primarily to the Hoadley Subdivision;

(iv) relate to trackage rights, haulage, interchange, joint facility, switching and similar agreements which relate to the Hoadley Subdivision;

(v) limits or purports to limit the ability of CPRC (or any of its Affiliates) to compete in any line of business or with any Person or in any geographic area or during any period of time which would adversely impact G&W;

(vi) contains a most favored nation (or similar provision) or exclusivity provision which would adversely impact G&W;

(vii) are leases or subleases of real property which relate to the Hoadley Subdivision and involve more than 5,000 square feet; or

(viii) includes a right of first refusal or right of first offer over any Canadian Transferred Asset.

9.11 Status of Agreements. Except for any breach or default which may result from the assignment of the Canadian Transferred Assets pursuant to this Agreement without the consent of parties to Contracts included in the Canadian Transferred Assets, each of the Assumed Contracts is presently in full force and effect in accordance with its terms, to the knowledge of CPKC there has been and is continuing no material breach by CPKC of any of the provisions of any of the Assumed Contracts, and to the knowledge of CPKC, there has been and is continuing no material breach by any other party to any of those Assumed Contracts of any of the provisions of any of the Assumed Contracts and no condition exists that, with notice or lapse of time or both, would constitute a material default by CPKC or, to the knowledge of CPKC, any other party to any of those Assumed Contracts. CPKC has delivered or made available to G&W a correct and complete copy of each written Assumed Contract. Each Assumed Contract is legal, valid, binding, enforceable, and in full force and effect and will continue to be legal, valid, binding, enforceable, and in full force and effect without any modification that would interfere in any material respect with the operation of the Canadian Transferred Assets as currently conducted immediately

following the consummation of and after giving effect to the transactions contemplated by this Agreement. CPKC has not received any notice of the intention of any party to terminate any material Assumed Contract, whether as a termination for convenience or for default of CPKC thereunder, except for such notices given in the ordinary course of business or as a result of the expiration of a contract as a result of its stated term. Except as set forth on **Schedule 9.11**, CPKC and/or its Affiliates have satisfied all currently due amounts due under any Assumed Contract.

9.12 **Taxes and Assessments.**

(i) Except for any Taxes, assessments, fees or other charges (including any interest or penalties) due to any Governmental Authority that CPKC in good faith is contesting or will contest through appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, CPKC has paid all material Taxes, assessments, fees or other charges (including any interest or penalties) due to any Taxing Authority to be paid with respect to the Canadian Transferred Assets which are due and payable.

(ii) All material Tax Returns required to be filed by CPKC with respect to the Canadian Transferred Assets have been or will be filed when due (taking into account applicable extensions) in accordance with all applicable Laws.

(iii) There are no Encumbrances for any Tax on the Canadian Transferred Assets except for Taxes not yet due and payable.

9.13 **Hazardous Materials.**

(a) Except for the Disclosed Environmental Conditions and except as described in **Schedule 9.13(a)**: (i) there are no underground or aboveground storage tanks in, on or under the Canadian Real Property, including any presently owned or operated Canadian Real Property, that CPKC uses or, to CPKC's knowledge, has used, and to CPKC's knowledge there are no other

underground or aboveground storage tanks in, on or under such locations; (ii) CPKC has not caused to be present, released, or exacerbated the condition of any Hazardous Substances that are present at or affecting any of the Canadian Transferred Assets, and to CPKC's knowledge, there has been no release of Hazardous Substances in contravention of Environmental Laws in, on or under the Canadian Real Property, and Hazardous Substances are not otherwise present at or affecting any of the Canadian Transferred Assets, in any case in a manner that is a violation of Environmental Laws or any Permit or that reasonably could be expected to result in a material liability to the owner or operator of the Canadian Transferred Assets or to interfere materially with the lawful operation of the Canadian Transferred Assets in the manner in which they are currently operated and have been operated since the beginning of the most recently completed fiscal year; and (iii) CPKC has not received from any Person notice of or claim with respect to any Environmental Liabilities relating to the Canadian Transferred Assets or a written request for information pursuant to Environmental Laws, which, remains pending or unresolved or is the source of ongoing obligations or requirements.

(b) To CPKC's knowledge and without representation or warranty as to accuracy or completeness (other than, with respect to completeness, to the extent such document is in CPKC's or its Affiliates' possession or reasonably within its control), CPKC has made available to G&W all reports, assessments, studies, audits, records, sampling data, site assessments and other documents containing material and non-privileged information concerning Hazardous Substances on, in, under, at or affecting or from the CPKC Transferred Assets that are within CPKC's possession or reasonably within its control.

(c) The representations in this Section 9.13, and in Sections 9.02, 9.03, 9.07, 9.08, 9.09, 9.10, and 9.15, are the exclusive representations of CPKC with respect to environmental

matters, Hazardous Substances, Environmental Laws, and any Environmental Liabilities related to the Canadian Transferred Assets.

9.14 Canadian Real Property.

(a) **Schedule 9.14** sets forth a list of all leased real property used or occupied by CPRC in connection with the Canadian Transferred Assets pursuant to written agreements (the "**Canadian Real Property Leases**"). Each Canadian Real Property Lease constitutes the legal, valid and binding obligation of CPRC, enforceable against CPRC in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws from time to time in effect affecting the enforcement of creditors' rights generally or by general principles of equity. All rent and other sums and charges payable by CPRC under each Canadian Real Property Lease have been duly paid. Neither CPRC nor any other party to any Canadian Real Property Lease, is in breach or default in any material respect in complying with any provisions thereof. No notice of default or termination under any Canadian Real Property Lease has been received by CPRC and no event has occurred which with or without notice or lapse of time, or both, would constitute a breach or default by CPRC that would interfere in any material respect with the operation or conduct of the Canadian Transferred Assets as currently conducted, or permit termination, modification, or acceleration under any Canadian Real Property Lease.

9.15 Undisclosed Liabilities. **Schedule 9.15** sets forth a list of all liabilities, obligations and commitments, whether fixed, contingent, accrued or unaccrued or otherwise, related to the Canadian Transferred Assets in excess of C\$ {{[REDACTED]}}

9.16 Competition Act Threshold. Neither the aggregate value of the Canadian Transferred Assets, nor the gross revenues from sales in or from Canada generated from the

Canadian Transferred Assets, exceeds C\$93 million, in each case determined in accordance with the *Competition Act* (Canada) and regulations thereunder.

9.17 No Filings under section 104 of the Canada Transportation Act. No filing has been made pursuant to section 104 of the *Canada Transportation Act* in respect of the Hoadley Subdivision, the Hoadley Subdivision Assets, or the Hoadley Rail Facilities.

X. G&W'S PRECLOSING COVENANTS

G&W covenants and agrees with CPKC as follows:

10.01 Negative Covenants. From the date of this Agreement until the Closing, without limiting G&W's obligations in Section 10.02, G&W will not, and shall cause MNBR not to, without the prior written approval of CPKC (including in this Agreement or any agreement ancillary hereto), such approval not to be unreasonably delayed or withheld, do or agree to do any of the following:

(i) Sell, assign, lease, mortgage, pledge, subject to any Encumbrance, grant any right or interest in, or otherwise transfer or dispose of, all or any part of the MNBR Transferred Assets or its real or personal property rights or operating rights which comprise the MNBR Transferred Assets (and which are not Excluded Assets), other than leases of personal property, enter into pipe and wire crossing agreements, road crossing agreements, side track agreements and similar agreements, or sales of scrap, obsolete or duplicative property, in each case in the ordinary course of business and consistent with MNBR's past business practices (and which in any case, or in the aggregate, would not be material);

(ii) Grant, amend, modify, extend or terminate any trackage rights, power run through agreements or haulage rights over or with respect to the MNBR Transferred Assets;

(iii) Enter into any marketing agreements or joint facility agreements or similar agreements affecting the MNBR Transferred Assets except in the ordinary course of business in accordance with past practice or on terms not materially more disadvantageous than current contracts or as permitted in clause (iv) below;

(iv) Enter into, amend, or renew any Contracts (other than Immaterial Contracts) or incur any obligation or indemnity relating to the MNBR Transferred Assets other than in the ordinary course of business and consistent with MNBR's past business practices (and which in any case, or in the aggregate, would not be material);

(v) Abandon or permanently discontinue service on all or any part of the rail lines included in the Rail Line;

(vi) Replace or substitute rail or any other MNBR Transferred Assets other than with material of the same or better kind and quality;

(vii) take any other action which would reasonably be expected to cause any of the representations and warranties made by G&W in this Agreement or any certificate delivered pursuant hereto not to remain true and correct in any material respect; or

(viii) agree or commit to do any of the foregoing.

10.02 Affirmative Covenants. Pending and prior to the Closing Date, G&W will:

(i) Use commercially reasonable efforts to preserve MNBR's relationships with suppliers, customers, employees and others having business relations with MNBR which relate to the MNBR Transferred Assets;

(ii) Operate the MNBR Transferred Assets in the ordinary, normal and usual manner consistent with past practice and keep and maintain the MNBR Transferred Assets substantially in their present condition; and

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XI. CPKC's PRECLOSING COVENANTS

CPKC covenants and agrees with G&W as follows:

11.01 Negative Covenants. From the date of this Agreement until the Closing, without limiting CPKC's obligations in Section 11.02, CPKC will not, and shall cause the CPKC Entities not to, without the prior written approval of G&W (including in this Agreement or any agreement ancillary hereto), such approval not to be unreasonably delayed or withheld, do or agree to do any of the following:

(i) Sell, assign, lease, mortgage, pledge, subject to any Encumbrance, grant any right or interest in, or otherwise transfer or dispose of, all or any part of the Canadian Transferred Assets or its real or personal property rights or operating rights which comprise the Canadian Transferred Assets (and which are not Excluded Assets), other than leases of personal property, enter into pipe and wire crossing agreements, road crossing agreements, side track agreements and similar agreements, or sales of scrap, obsolete or duplicative property, in each case in the ordinary course of business and consistent with CPKC's past business practices (and which in any case, or in the aggregate, would not be material);

(ii) Grant, amend, modify, extend or terminate any trackage rights, power run through agreements or haulage rights over or with respect to the Canadian Transferred Assets;

(iii) Enter into any marketing agreements or joint facility agreements or similar agreements affecting the Canadian Transferred Assets except in the ordinary course of business in accordance with past practice or on terms not materially more disadvantageous than current contracts or as permitted in clause (iv) below;

(iv) Enter into, amend, or renew any Contracts (other than Immaterial Contracts) or incur any obligation or indemnity relating to the Canadian Transferred Assets other than in the ordinary course of business and consistent with CPKC's past business practices (and which in any case, or in the aggregate, would not be material);

(v) Abandon or permanently discontinue service on all or any part of the rail lines included in the Canadian Transferred Assets;

(vi) Replace or substitute rail or any other portion of the Canadian Transferred Assets other than with material of the same or better kind and quality;

(vii) take any other action which would reasonably be expected to cause any of the representations and warranties made by CPKC in this Agreement or any certificate delivered pursuant hereto not to remain true and correct in any material respect;

(viii) or

(ix) agree or commit to do any of the foregoing.

11.02 Affirmative Covenants. Pending and prior to the Closing Date, CPKC will:

(i) use commercially reasonable efforts to preserve CPKC's relationships with suppliers, customers, employees and others having business relations with CPKC which relate to the Canadian Transferred Assets; and

(ii) operate the Canadian Transferred Assets in the ordinary, normal and usual manner consistent with past practice and keep and maintain the Canadian Transferred Assets substantially in their present condition.

XII. CONDITIONS PRECEDENT TO CPKC'S OBLIGATION TO CLOSE

The obligations of CPKC to purchase the MNBR Transferred Assets and to effect the Closing are subject, at the option of CPKC, to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

12.01 Representations and Warranties. G&W's Fundamental Representations and Warranties shall be true and correct on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for such other representations and warranties that expressly speak as of an earlier date, which representations and warranties shall be true and correct as of such specified date). The representations and warranties of G&W that contain any materiality or G&W Material Adverse Effect qualifications shall have been true and correct when made, and shall be true and correct on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for representations

and warranties that expressly speak as of an earlier date, which representations and warranties shall be true and correct as of such specified date); the other representations and warranties of G&W made herein shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for such other representations and warranties that expressly speak as of an earlier date, which representations and warranties shall be true and correct in all material respects as of such specified date); and G&W shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by G&W prior to the Closing.

12.02 STB Conditions. The STB Approval shall have been received and become effective and neither the STB nor any other Governmental Authority in the United States shall have imposed any condition or obligation on the transactions to be consummated which a party reasonably believes would have a material impact on the benefits to be realized by consummation of the transactions contemplated hereby (other than standard labor protective conditions).

12.03 Railway Operating Approvals. Hoadley Newco shall have received the Railway Operating Approvals – Hoadley Newco and AIH Newco shall have received the Railway Operating Approvals – AIH Newco, both of which shall have become effective, and no Governmental Authority in Canada shall have imposed any condition or obligation on the transactions to be consummated which a party reasonably believes would have a material impact on the benefits to be realized by consummation of the transactions contemplated hereby.

12.04 Documents at Closing. G&W shall have delivered to CPKC on or before the Closing Date all agreements, instruments and documents required to be delivered by G&W to

CPKC pursuant to Section 5.02. G&W shall have delivered a certificate of G&W signed by the President and Secretary of G&W in the form attached hereto as **Exhibit [●]**.

12.05 No Governmental Action or Legal Proceedings. As of the Closing Date, no statute, rule, regulation, Order, decree, directive, litigation, action, writ or judgment shall be pending or have been enacted, adopted, issued, promulgated or rendered by any government or by any Governmental Authority (and not subsequently dismissed, settled, withdrawn or terminated) which seek to or would as of the Closing Date (a) make illegal or prevent the consummation of or restrain or invalidate the transactions contemplated by this Agreement, or the other material agreements and instruments called for hereunder, (b) materially interfere with or prohibit the continued effectiveness of such agreements and instruments or (c) prevent, limit, restrict or impair in any material respect the ownership, use or operation of the MNBR Transferred Assets by KCS.

12.06 Contractual Consents. G&W shall have received the consents and approvals listed on **Schedule 12.06.**

12.07 Other Actions. The following shall have occurred:

- (1) G&W shall have delivered evidence of an executed Termination of Interchange Agreement – CSXT / MNBR satisfactory to CPKC.
- (2) KCS shall have entered into the Interchange Agreement – KCS and CSXT.
- (3) The Operating Plan – KCS / MNBR shall have become effective.
- (4) CSXT shall have entered into the Trackage Rights Agreement – KCS / CSXT.

CSXT. CSXT shall have obtained the CSXT Regulatory Approvals and the CSXT Relevant Transactions and any other relevant transaction shall have been consummated simultaneously with or prior to the transactions contemplated by this Agreement.

XIII. CONDITIONS PRECEDENT TO G&W'S OBLIGATION TO CLOSE

The obligations of G&W to sell, transfer, convey and deliver the MNBR Transferred Assets and to effect the Closing are subject, at the option of G&W, to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

13.01 Representations and Warranties. CPKC's Fundamental Representations and Warranties shall be true and correct on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for such other representations and warranties that expressly speak as of an earlier date, which representations and warranties shall be true and correct as of such specified date). The representations and warranties of CPKC that contain any materiality or CPKC Material Adverse Effect qualifications shall have been true and correct when made, and shall be true and correct on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for representations and warranties that expressly speak as of an earlier date, which representations and warranties shall be true and correct as of such specified date); the other representations and warranties of CPKC made herein shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for such other representations and warranties that expressly speak as of an earlier date, which representations and warranties shall be true and correct in all material respects as of such specified date); and CPKC shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by CPKC prior to the Closing.

13.02 STB Conditions. The STB Approval shall have been received and become effective and neither the STB nor any other Governmental Authority in the United States shall have imposed any condition or obligation on the transactions to be consummated which a party reasonably believes would have a material impact on the benefits to be realized by consummation of the transactions contemplated hereby (other than standard labor protective conditions).

13.03 Railway Operating Approvals. Hoadley Newco shall have received the Railway Operating Approvals – Hoadley Newco and **[AIH Newco]** shall have received the Railway Operating Approvals – **[AIH Newco]**, both of which shall have become effective, and no Governmental Authority in Canada shall have imposed any condition or obligation on the transactions to be consummated which a party reasonably believes would have a material impact on the benefits of the transactions contemplated hereby.

13.04 Documents at Closing. CPKC shall have delivered to G&W on or before the Closing Date all agreements, instruments and documents required to be delivered by CPKC to G&W pursuant to Section 5.03. CPKC shall have delivered a certificate of CPKC signed by the President and the Secretary of CPKC in the form attached hereto as **Exhibit [●]**.

13.05 No Governmental Action or Legal Proceedings. As of the Closing Date, no statute, rule, regulation, Order, decree, directive, litigation, action, writ or judgment shall be pending or have been enacted, adopted, issued, promulgated or rendered by any government or by any Governmental Authority (and not subsequently dismissed, settled, withdrawn or terminated) which seek to or would as of the Closing Date (a) make illegal or prevent the consummation of or restrain or invalidate the transactions contemplated by this Agreement or the other material agreements and instruments called for hereunder, (b) materially interfere with or prohibit the continued

effectiveness of such agreements and instruments or (c) prevent, limit, restrict or impair in any material respect the ownership, use or operation of the Canadian Transferred Assets by G&W.

13.06 Other Agreements. The following shall have occurred:

- (1) MNBR and CSXT shall have entered into the Trackage Rights Agreement – CSXT / MNBR;
- (2) CSXT and MNBR shall have entered into the Interchange Agreement – CSXT / MNBR.
- (3) CSXT shall have entered into the Trackage Rights Agreement – KCS / CSXT.
- (4) The Operating Plan – KCS / MNBR shall have become effective.

13.07 CSXT. CSXT shall have obtained the CSXT Regulatory Approvals and the CSXT Relevant Transactions and any other relevant transactions shall have been consummated simultaneously with or prior to the transactions contemplated by this Agreement.

XIV. RISK OF LOSS; DEFAULT; TERMINATION

14.01 Risk of Loss.

(a) Subject to the limitations hereinafter stated, the risk of loss or damage by fire or other casualty or cause to the MNBR Transferred Assets until the Closing shall be upon G&W. In the event of such loss or damage prior to the Closing, G&W shall promptly restore, replace or repair the damaged assets to their previous condition at G&W's sole cost and expense if the parties' reasonable cost estimate to repair such matter is less than \${{[REDACTED]}} and the Closing Date (but not the Drop Dead Date) shall be extended until such repairs are completed (to CPKC's reasonable satisfaction) by G&W. If the parties' reasonable cost estimate to repair such matter equals or exceeds \${{[REDACTED]}} and if the parties' reasonable time estimate to repair such matter is greater than thirty (30) days following the Closing Date, the Closing Date (but not the Drop

Dead Date) shall be extended until such repairs are completed (to CPKC's reasonable satisfaction) by G&W at G&W's sole cost and expense. If the parties' reasonable cost estimate to repair such matter equals or exceeds \${{[REDACTED]}} and if the parties' reasonable time estimate to repair such matter is fewer than thirty (30) days following the Closing Date, the Closing shall not be delayed but G&W shall promptly reimburse the amount reasonably required by CPKC for such repairs.

(b) Subject to the limitations hereinafter stated, the risk of loss or damage by fire or other casualty or cause to the Canadian Transferred Assets until the Closing shall be upon CPKC. In the event of such loss or damage prior to the Closing, CPKC shall promptly restore, replace or repair the damaged assets to their previous condition at CPKC's sole cost and expense if the parties' reasonable cost estimate to repair such matter is less than \${{[REDACTED]}}, and the Closing Date (but not the Drop Dead Date) shall be extended until such repairs are completed (to G&W's reasonable satisfaction) by CPKC. If the parties' reasonable cost estimate to repair such matter equals or exceeds \${{[REDACTED]}}, and if the parties' reasonable time estimate to repair such matter is greater than thirty (30) days following the Closing Date, the Closing Date (but not the Drop Dead Date) shall be extended until such repairs are completed (to G&W's reasonable satisfaction) by CPKC at CPKC's sole cost and expense. If the parties' reasonable cost estimate to repair such matter equals or exceeds \${{[REDACTED]}} and if the parties' reasonable time estimate to repair such matter is fewer than thirty (30) days following the Closing Date, the Closing shall not be delayed but CPKC shall promptly reimburse the amount reasonably required by G&W for such repairs.

14.02 Termination by G&W.

(a) (1) If (i) CPKC shall have failed to perform in any material respect any of its obligations under this Agreement or any representation or warranty of CPKC contained in this

Agreement or any certificate delivered pursuant hereto shall not be true and correct, which failure to perform or failure to be true and correct (A) would permit G&W not to consummate the Closing pursuant to Section 13.01 and (B) is not cured or is incapable of being cured within thirty (30) days after the receipt by CPKC of written notice of such failure, (ii) any Governmental Authority which must grant any approval required under this Agreement has denied such approval and such denial has become final and nonappealable or any Governmental Authority shall have issued a judgment, decision, decree, Order, settlement, injunction, writ, stipulation, determination, charge or award, or binding arbitral award ("**Injunction**") or taken any other action permanently restraining, enjoining or otherwise prohibiting any of the transactions contemplated by this Agreement, and such Injunction or other action shall have become final and nonappealable, or (iii) the transactions contemplated by this Agreement have not been consummated by the Drop Dead Date, and (2) with respect to foregoing clause (1)(i), G&W shall not then be in material default in the performance of G&W's obligations hereunder, G&W shall, without limiting Section 16.17, be entitled, by written notice to CPKC, to terminate this Agreement in its entirety except for the provisions of Section 6.02 and Section 14.06 (which provisions shall survive such termination).

14.03 Termination By CPKC. (1) If (i) G&W shall have failed to perform in any material respect any of its obligations under this Agreement or any representation or warranty of G&W contained in this Agreement or any certificate delivered pursuant hereto shall not be true and correct, which failure to perform or failure to be true and correct (A) would permit CPKC not to consummate the Closing pursuant to Section 12.01 and (B) is not cured or is incapable of being cured within thirty (30) days after the receipt by G&W of written notice of such failure, (ii) any Governmental Authority which must grant any approval required under this Agreement has denied such approval and such denial has become final and nonappealable or any Governmental Authority

shall have issued an Injunction or taken any other action permanently restraining, enjoining or otherwise prohibiting any of the transactions contemplated by this Agreement, and such Injunction or other action shall have become final and nonappealable, or (iii) the transactions contemplated by this Agreement have not been consummated by the Drop Dead Date, and (2) with respect to foregoing clause (1)(i), CPKC shall not then be in material default in the performance of CPKC's obligations hereunder, CPKC shall, without limiting Section 16.17, be entitled, by written notice to G&W, to terminate this Agreement in its entirety except for the provisions of Section 6.02 and Section 14.06 (which provisions shall survive such termination).

14.04 Failure of STB to Approve. This Agreement may be terminated by either G&W or CPKC upon written notice to the other, if the STB has issued an STB Order, but such STB Order is stayed or enjoined pending judicial review, and a final decision approving such STB Order is not issued and effective by the Drop Dead Date.

14.05 Mutual Agreement. This Agreement may be terminated at any time prior to the Closing Date upon the mutual written agreement of CPKC and G&W.

14.06 Effect of Termination. In the event of the termination of this Agreement as provided in this Article XIV, this Agreement shall forthwith become null and void and of no further force or effect, except for provisions that are specifically identified as intended to survive such termination (including Section 6.02 and this Section 14.06). Notwithstanding anything to the contrary contained in this Agreement, including any termination of this Agreement, neither CPKC nor G&W shall be relieved or released from any liabilities or damages arising out of its knowing, intentional and material breach of any provision of this Agreement or from fraud.

XV. SURVIVAL; INDEMNIFICATION

15.01 Survival of Warranties and Covenants; Limitations.

(a) All representations and warranties made by G&W and CPKC in this Agreement or any certificate delivered pursuant hereto and any Operative Document shall survive the execution and delivery of this Agreement and the Closing and shall remain operative and in full force and effect for a period of eighteen (18) months following the Closing Date, except the representations and warranties in (i) Section 8.05 (Employment and Employee Benefit Matters) and Section 9.06 (Employment and Employee Benefit Matters) shall survive for six (6) years from the Closing Date, (ii) Sections 8.11 (Taxes and Assessments) and 9.12 (Taxes and Assessments) shall survive for a period equal to the applicable statute of limitations (including extensions) plus sixty (60) days and (iii) Section 8.12 (Hazardous Materials) and 9.13 (Hazardous Materials) shall survive for five (5) years from the Closing Date. G&W's Fundamental Representations and Warranties and CPKC's Fundamental Representations and Warranties shall survive for a period {{ [REDACTED] }} following the Closing Date.

(b) Neither G&W nor CPKC shall have any obligation to provide indemnification pursuant to Section 15.02(a)(i) or 15.03(a), respectively, until the amount of Claims (as hereinafter defined) that G&W or CPKC incurs or suffers by reason of or resulting from or in connection with such breaches of representations and warranties by the other exceeds \${{ [REDACTED] }} (the "Deductible") in the aggregate on a cumulative basis and then only to the extent such Claims and any other Claims exceed the Deductible on a cumulative basis. Notwithstanding the foregoing, breaches of G&W's Fundamental Representations and Warranties, CPKC's Fundamental Representations or with respect to G&W, the representations and warranties set forth in Sections 8.05 (Employment and Employee Benefit Matters) and 8.11 (Taxes and Assessments) and with respect to CPKC, the representations and warranties set forth in Sections 9.06

(Employment and Employee Benefit Matters) and 9.12 (Taxes and Assessments), shall not be subject to the Deductible.

(c) The aggregate amount G&W or CPKC shall be required to indemnify pursuant to Section 15.02(a)(i) or 15.03(a), respectively, shall not exceed \${{[REDACTED]}} (the "**Cap**"), except for breaches of G&W's Fundamental Representations and Warranties, CPKC's Fundamental Representations or with respect to G&W, the representations and warranties set forth in Sections 8.05 (Employment and Employee Benefit Matters) and 8.11 (Taxes and Assessments), and with respect to CPKC, the representations and warranties set forth in Sections 9.06 (Employment and Employee Benefit Matters) and 9.12 (Taxes and Assessments) (collectively, the "**Overall Cap Reps**"), which Overall Cap Reps shall not be subject to the Cap. In no event shall G&W's, G&W Canada Holdco's or CPKC's, as applicable, aggregate liability pursuant to Section 15.02 or 15.03, respectively, including with respect to breaches of the Overall Cap Reps, exceed an aggregate amount equal to \${{[REDACTED]}}

(d) Any claim for indemnification under this Agreement shall be computed net of any insurance proceeds actually received by the Indemnified Party (as hereinafter defined) in connection with such claim (calculated net of any out-of-pocket expenses related to the receipt of such recovery, including any incremental insurance premium costs).

(e) Neither party shall be required to indemnify the other for punitive or exemplary damages and each party waives all rights of recovery with respect thereto, except to the extent such punitive or exemplary damages arise out of or result from any claim or other assertion of liability by third parties (hereinafter called collectively, "**Third Party Claims**").

(f) Except for the remedies provided in Section 16.17, the indemnification set forth in this Article XV shall be the sole and exclusive post-Closing remedy of the parties against the other for breach of the representations, warranties and covenants of this Agreement.

(g) Solely for the purposes of calculating the amount of Claims (but not for determining whether a breach of any representation or warranty has occurred) for purposes of this Article XV, all materiality, G&W Material Adverse Effect or CPKC Material Adverse Effect and similar qualifiers shall be disregarded therefrom.

15.02 Indemnification by G&W.

(a) Subject to the limitations of Section 15.01 and to the conditions and provisions of Sections 15.04, and 15.05, from and after the Closing, G&W agrees to indemnify, defend and hold harmless CPKC and its Affiliates, their respective directors, officers, stockholders, employees, members, managers, agents, successors and assigns (collectively, the **“CPKC Indemnified Parties”**), from, against and with respect to any and all demands, claims, actions or causes of action, suits, proceedings, investigations, assessments, losses, damages, fines, settlements, liabilities, costs and expenses, including interest, penalties and attorneys' fees and disbursements, Third Party Claims, and other costs and expenses (collectively, **“Claims”**), asserted against, imposed upon or incurred directly or indirectly by any such CPKC Indemnified Party, by reason of, resulting from, or in connection with: (i) any breach or inaccuracy of any representation or warranty of G&W contained in this Agreement or any certificate delivered pursuant hereto or the Operative Documents; (ii) any breach or noncompliance by G&W with any covenants, agreements, obligations or undertakings of G&W contained in or made pursuant to this Agreement or any certificate delivered pursuant hereto; (iii) any liabilities, debts or other obligations of G&W, or any Affiliates of G&W, or other persons or entities related to G&W and any Claims related to

the MNBR Transferred Assets Excluded Obligations; (iv) any Claims related to the failure to timely pay, perform or discharge any of the Canadian Transferred Assets Assumed Obligations; and (v) any liability from post-Closing access to or activities on KCS' property by G&W, any of its Affiliates or any of their respective agents, representatives or other invitees, including pursuant to Section 7.01 ; and

(b) Subject to the applicable limitations of Section 15.01 and to the conditions and provisions of Sections 15.04, and 15.05, from and after the Closing, G&W Canada Holdco agrees to indemnify, defend and hold harmless the CPKC Indemnified Parties, from, against and with respect to any and all Claims, asserted against, imposed upon or incurred directly or indirectly by any such CPKC Indemnified Party, by reason of, resulting from, or in connection with any liabilities, debts or other obligations of any G&W Canadian Co. under any agreement, certificate or document delivered at Closing (including, without limitation, the CPKC Right of First Refusal, the Hoadley Operating Rights & Interchange Agreement, the Rate Divisional Agreement, the Plot 6 Right of First Refusal and the Scotford Easement Agreement), in each case on a joint and several basis with the applicable G&W Canadian Co.

15.03 Indemnification by CPKC. Subject to the limitations of Section 15.01 and to the conditions and provisions of Sections 15.04, and 15.05, from and after the Closing, CPKC agrees to indemnify, defend and hold harmless G&W and its Affiliates, their respective directors, officers, stockholders, employees, members, managers, agents, successors and assigns (collectively, the "**G&W Indemnified Parties**") from, against and with respect to any and all Claims asserted against, imposed upon or incurred directly or indirectly by any such G&W Indemnified Party, by reason of or resulting from, or in connection with (a) any breach or inaccuracy of any representation or warranty of CPKC contained in this Agreement or any certificate delivered

pursuant hereto or the Operative Documents; (b) any breach or noncompliance by CPKC with any covenants, agreements, obligations or undertakings of CPKC contained in or made pursuant to this Agreement or any certificate delivered pursuant hereto; (c) any liabilities, debts or other obligations of CPKC, or any Affiliates of CPKC, or other persons or entities related to CPKC and any Claims related to the Canadian Transferred Assets Excluded Obligations, (d) any Claims related to any failure to timely pay, perform or discharge any of the MNBR Assumed Obligations; and (e) any liability from post-Closing access to or activities on G&W's property by CPKC, any of its Affiliates or any of their respective agents, representatives or other invitees, including pursuant to Section 7.01.

15.04 Conditions of Indemnification.

(a) If there occurs an event which a party asserts is an indemnifiable event pursuant to this Article XV, including any Third Party Claim, the party seeking indemnification (the "**Indemnified Party**") shall promptly notify the other party or parties obligated to provide indemnification (the "**Indemnifying Party**"). Any failure to provide prompt notice as provided herein shall only relieve the Indemnifying Party of its indemnity obligations if and to the extent the delay materially prejudices the defense of such Claim.

(b) Within twenty (20) days after the Indemnified Party gives written notice of a Third Party Claim pursuant to Section 15.04(a), the Indemnifying Party shall have the right to promptly undertake the defense of such Third Party Claim, at the Indemnifying Party's cost and risk, with counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party by providing the Indemnified Party with written notice of its election to assume such defense and acknowledgement that such Third Party Claim is subject to indemnification in favor of the Indemnified Party.

(c) In the event that the Indemnifying Party shall elect not to undertake such defense, or within a reasonable time after notice of any such Third Party Claim from the Indemnified Party shall fail to defend, the Indemnified Party (upon further written notice to the Indemnifying Party) shall have the right on behalf of and for the account and risk of the Indemnifying Party to undertake the defense, compromise or settlement of such Third Party Claim by counsel or other representatives of the Indemnified Party's own choosing. In such event, the Indemnifying Party shall pay to the Indemnified Party, in addition to any other sums required to be paid hereunder, the costs and expenses incurred by the Indemnified Party in connection with such defense, compromise or settlement as and when such costs and expenses are so incurred.

(d) Anything in this Section 15.04 to the contrary notwithstanding, (i) the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense, compromise or settlement of the Third Party Claim, (ii) the Indemnifying Party shall not, without the Indemnified Party's written consent, settle or compromise any Third Party Claim or consent to entry of any judgment, except if the relief under such settlement, compromise or judgment is solely monetary and such settlement, compromise or judgment does not include any admission of fault and includes as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such Third Party Claim in a form reasonably satisfactory to the Indemnified Party, (iii) in the event that the Indemnifying Party undertakes defense of any Third Party Claim, the Indemnified Party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the Indemnifying Party and its counsel or other representatives concerning such Third Party Claim and the Indemnifying Party and the Indemnified Party and their respective counsel or other representatives shall cooperate with respect to such Third Party Claim, and (iv) in the event that

the Indemnifying Party undertakes defense of any Third Party Claim, the Indemnifying Party shall have an obligation to keep the Indemnified Party informed of the status of the defense of such Third Party Claim and furnish the Indemnified Party with all documents, instruments and information that the Indemnified Party shall reasonably request in connection therewith. Notwithstanding the foregoing, in the event the Indemnifying Party undertakes the defense of any Third Party Claim, the Indemnified Party shall have the right to employ its own counsel at the Indemnifying Party's expense if the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be one or more specific defenses available to it which are different from or additional to those available to the Indemnifying Party or otherwise has a conflict of interest.

(e) G&W shall not be liable to the CPKC Indemnified Parties for any Claim pursuant to Section 15.02 regarding a breach of any representations or warranties in Section 8.12 of this Agreement, or pursuant to any other provision of this Agreement concerning Environmental Liabilities that are MNBR Transferred Assets Excluded Obligations (insofar as they concern the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets), to the extent such Claim:

(i) arises out of a change by CPKC or its Affiliates, their successors or assigns or any future owner of any interest in the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets, or their respective employees, agents, contractors or invitees, in the use of the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets, to purposes other than railroad use;

(ii) arises out of or involves remediation or other remedial action by CPKC or its Affiliates, their successors or assigns or any future owner of any interest in the MNBR

Real Property or the other tangible property included in the MNBR Transferred Assets, or their respective employees, agents, contractors or invitees, that is not required under Environmental Laws or requested by a Governmental Authority asserting jurisdiction or pursuant to a Third Party Claim;

(iii) arises out of or involves remediation or other remedial action by CPKC or its Affiliates, their successors or assigns or any future owner of any interest in the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets, or their respective employees, agents, contractors or invitees, beyond the least restrictive standard that is required in order to continue using the affected property solely for railroad purposes as it is currently operated in all material respects, unless required under Environmental Laws or requested by a Governmental Authority asserting jurisdiction or pursuant to a Third Party Claim;

(iv) arises out of any act or omission of CPKC or its Affiliates, their successors or assigns, or their respective employees, agents, contractors or invitees, or any other third party after the Closing, to the extent that it contributes to or it exacerbates any condition that is the subject of a Claim pursuant to Section 15.02(a)(i) of this Agreement regarding a breach of any representations or warranties in Section 8.12 of this Agreement or pursuant to any other provision of this Agreement concerning Environmental Liabilities that are MNBR Transferred Assets Excluded Obligations;

(v) results from any environmental sampling, testing or analysis by CPKC or its Affiliates, their successors or assigns or any future owner of any interest in the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets, or their respective employees, agents, contractors or invitees at any of the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets, or any Governmental Authority,

unless such sampling, testing or analysis is: (A) required to be conducted pursuant to applicable Laws or by a Governmental Authority asserting jurisdiction; or (B) reasonably and in good faith performed or obtained in connection with (I) any repairs at, on or for any of the MNBR Real Property or the other tangible property included in the MNBR Transferred Assets necessary to maintain the property in its present condition, (II) any measures reasonably and in good faith calculated to protect the health, safety or property of any person or entity at or about any MNBR Real Property or the other tangible property included in the MNBR Transferred Assets in accordance with current use for railroad purposes, or (III) any written and reasonable request of any landlord (or other person with a property interest in or affected by any MNBR Real Property or the other tangible property included in the MNBR Transferred Assets), lender, prospective purchaser, or insurance company to the extent required by Law or contract.

(f) CPKC shall not be liable to the G&W Indemnified Parties for any Claim pursuant to Section 15.03 regarding a breach of any representations or warranties in Section 9.13 of this Agreement, or pursuant to any other provision of this Agreement concerning Environmental Liabilities that are Canadian Transferred Assets Excluded Obligations (insofar as they concern the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets), to the extent such Claim:

(i) arises out of a change by G&W or its Affiliates, their successors or assigns or any future owner of any interest in the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets, or their respective employees, agents, contractors or invitees, in the use of the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets, to purposes other than railroad use;

(ii) arises out of or involves remediation or other remedial action by G&W or its Affiliates, their successors or assigns or any future owner of any interest in the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets, or their respective employees, agents, contractors or invitees, that is not required under Environmental Laws or requested by a Governmental Authority asserting jurisdiction or pursuant to a Third Party Claim;

(iii) arises out of or involves remediation or other remedial action by G&W or its Affiliates, their successors or assigns or any future owner of any interest in the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets, or their respective employees, agents, contractors or invitees, beyond the least restrictive standard that is required in order to continue using the affected property solely for railroad purposes as it is currently operated in all material respects, unless required under Environmental Laws or requested by a Governmental Authority asserting jurisdiction or pursuant to a Third Party Claim;

(iv) arises out of any act or omission of G&W or its Affiliates, their successors or assigns, or their respective employees, agents, contractors or invitees, or any other third party after the Closing, to the extent that it contributes to or it exacerbates any condition that is the subject of a Claim pursuant to Section 15.03(a) of this Agreement regarding a breach of any representations or warranties in Section 9.13 of this Agreement or pursuant to any other provision of this Agreement concerning Environmental Liabilities that are Canadian Transferred Assets Excluded Obligations;

(v) results from any environmental sampling, testing or analysis by G&W or its Affiliates, their successors or assigns or any future owner of any interest in the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets,

or their respective employees, agents, contractors or invitees at any of the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets, or any Governmental Authority, unless such sampling, testing or analysis is: (A) required to be conducted pursuant to applicable Laws or by a Governmental Authority asserting jurisdiction; or (B) reasonably and in good faith performed or obtained in connection with (I) any repairs at, on or for any of the Canadian Real Property or the other tangible property included in the Canadian Transferred Assets necessary to maintain the property in its present condition, (II) any measures reasonably and in good faith calculated to protect the health, safety or property of any person or entity at or about any Canadian Real Property or the other tangible property included in the Canadian Transferred Assets in accordance with current use for railroad purposes, or (III) any written and reasonable request of any landlord (or other person with a property interest in or affected by any Canadian Real Property or the other tangible property included in the Canadian Transferred Assets), lender, prospective purchaser, or insurance company to the extent required by Law or contract.

(g) Notwithstanding any other provision of this Agreement, if a Party is entitled to indemnification under this Agreement with respect to any Environmental Liability involving investigation, remediation, clean-up, corrective action, or monitoring or other activity at or affecting any real property or other tangible property included in the transferred assets (“**Works**”), the Indemnifying Party at its sole cost and risk, shall be entitled (but not required) to conduct any and all negotiations with any Governmental Authority and any other affected person with respect to such matter, and to perform or arrange for the performance of any and all such Works, all in a timely, expeditious and diligent manner, and shall have a reasonable right of access to the affected real property and other tangible property, subject to the Indemnified Party's approval, which shall not be unreasonably withheld, conditioned or delayed. If the Indemnifying Party declines, or

within a reasonable time after notice from the Indemnified Party fails, to conduct such negotiations or to perform or arrange for the performance of such Works, the Indemnified Party may do so in a timely, expeditious and diligent manner. The party conducting such negotiations or performing or arranging for the performance of such Works shall take reasonable efforts to keep the other Party informed of the progress of any such negotiations and any related Works, and to obtain and consider in advance any comments from or on behalf of the other Party with respect to such negotiations and any related Works; and the other Party shall take reasonable efforts to provide any such comments in a timely fashion in light of timing considerations. Any Works shall be performed in compliance with, and shall satisfy, all applicable Laws and shall not unreasonably interfere with Indemnified Party's operations at or about the affected real property or other tangible property.

15.05 Other Indemnity Matters. The indemnities contained in Sections 15.02 and 15.03 shall be continuing (except that as to representations and warranties, the indemnity shall expire on the date the relevant representation and warranty ceases to survive pursuant to Section 15.01(a)); provided, however, that with respect to any claim for indemnification for which notice has been given to the Indemnifying Party within the period that the relevant representation and warranty survives, the indemnification period shall be extended until the final resolution of such claim. The parties agree that any indemnification payment made pursuant to this Agreement shall be treated for tax purposes as an adjustment to the consideration received unless otherwise required by applicable Law.

XVI. MISCELLANEOUS

16.01 Consents and Filings.

(a) Each of the parties hereto shall give or cause to be given all required notices and use its Best Efforts to obtain as soon as practicable after execution hereof, and prior to Closing,

all licenses, Permits, consents, waivers, approvals, authorizations, qualifications and Orders of Governmental Authorities as may be required in order to enable CPKC and G&W to perform their respective obligations under this Agreement, and each of the agreements and instruments called for hereunder, including (i) required or desired approvals, exemptions or actions, if any, by the STB with respect to the transactions contemplated by this Agreement, as more fully set forth in Section 16.01(b) below, (ii) any Railway Operating Approvals required with respect to the transactions contemplated by this Agreement and (iii) filings, notifications and consents, if any, required under certain state Laws for CPKC's acquisition of the MNBR Transferred Assets; provided that, except as mutually agreed by the parties, and except as set forth in Section 16.01(b), all required filings and notices shall be made no later than fifteen (15) days from the date of this Agreement. CPKC and G&W shall cooperate and use their Best Efforts to respond as promptly as practicable to all inquiries received from the STB, or other federal, provincial, or state agencies for initial or additional information or documentation. For the avoidance of doubt, nothing in this Agreement shall in any way limit or restrict the ability of CPKC or G&W or any of their respective Affiliates to engage in any acquisitions or similar transactions or any divestitures, investments or similar transactions.

(b) CPKC shall use its Best Efforts (and the other party shall use its Best Efforts to cooperate) to prepare and file no later than five (5) days from the date of this Agreement (or as soon thereafter as is practicable) with the STB a complete and adequate notice(s) or petition(s) for exemption, or application(s) to authorize the transactions contemplated by this Agreement between a G&W Entity and a CPKC Entity, together with any notices required by the applicable regulations. G&W shall support CPKC's efforts to make the STB filing and each party shall cooperate in seeking STB Approval, and in using Best Efforts to defend against any petition for

stay or any petition for revocation before the STB, and to intervene in and defend any appeal of any STB Order by the STB approving the application, notices or requests, and in appealing any STB Order by the STB denying the application(s), petitions(s), notices or requests. Prior to filing any such application(s), petition(s), notice(s), requests and other pleadings with the STB (and any appellate court), each party shall submit such documents to the other party's counsel for review.

(c) G&W Canadian Co. shall use its Best Efforts (and CPKC shall use its Best Efforts to cooperate) to prepare and file, no later than fifteen (15) days from the date of this Agreement, any application or documentation required to obtain the Railway Operating Approvals.

16.02 Additional Actions and Documents. At or after the Closing, and without further consideration, G&W and CPKC will execute and deliver such further instruments of conveyance, assignment and transfer and take such other reasonable actions as CPKC or G&W, as applicable, may reasonably request in order to convey, assign and transfer to CPKC any of the MNBR Transferred Assets and to G&W the Canadian Transferred Assets and otherwise carry out the purpose of this Agreement.

16.03 Brokers. Each party represents and warrants to the other that such party has not incurred any liability to any broker, finder or agent for any brokerage fees or commissions or finders' fees or commissions with respect to the transactions contemplated by this Agreement which will be a direct or indirect obligation of the other party hereto. Each party agrees to indemnify, defend and hold harmless the other party from and against any and all claims asserted against the other party for any such fees or commissions claimed by any persons purported to act or to have acted for on or behalf of the indemnifying party. The provisions of this Section 16.03 shall survive the Closing.

16.04 Expenses.

(a) All Transfer Taxes arising in connection with the transfer of the MNBR Transferred Assets (excluding any other Tax of G&W or CPKC (as applicable)), together with fees incidental to the transfer of the Rail Line, the lands upon the Rail Line is located, or the recordation or filing of the deed (or deeds), shall be borne by G&W.

(b) For clarity, the consideration payable for the Canadian Transferred Assets is exclusive of any applicable Transfer Taxes. GST and any other recoverable Transfer Taxes arising in connection with the transfer of the Canadian Transferred Assets shall be borne by G&W Canadian Co. All other Transfer Taxes arising in connection with the transfer of the Canadian Transferred Assets (excluding any other Tax of G&W or CPKC (as applicable)), together with fees incidental to the transfer of the Canadian Transferred Assets, the lands upon which the Canadian Transferred Assets are located, or the recordation or filing of the deed (or deeds), shall be borne by G&W². Where GST is collectible by CPRC, G&W Canadian Co. shall pay such GST to CPRC upon receipt of an invoice or other supporting documentation that includes the prescribed information as may be required for G&W Canadian Co. to claim input tax credits under the *Excise Tax Act* (Canada). Where GST payable by G&W Canadian Co. is not collectible by CPRC, G&W Canadian Co. shall self-assess and report such GST in accordance with applicable law to the appropriate governmental authority.

(c) Except as otherwise expressly provided herein, each party hereto shall pay its own expenses incident to this Agreement and the transactions contemplated hereunder, including all legal and accounting fees and disbursements, regulatory filing fees and costs of obtaining necessary consents, and any other Governmental Authority fees and costs in connection with obtaining any consents, authorizations and approvals.

² **NTD:** Conforming change to reflect previous comments regarding such fees being borne by buyer.

16.05 Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement, or under any other agreements or instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of default or any acquiescence therein.

16.06 Successors and Assigns. This Agreement shall be binding upon, and enure to the benefit of, the respective successors and permitted assigns of the parties.

16.07 Assignment. This Agreement may not be assigned by a party in whole or in part without the advance written consent of the non-assigning party, and any such attempted unauthorized assignment shall be deemed void and of no effect; provided, however, any assignment pursuant to a sale or transfer of all or substantially all of CPKC's or G&W's assets by way of merger, sale, consolidation, combination, or Order or decree of a Governmental Authority shall not require written consent of the non-assigning party.

16.08 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be mailed by a recognized overnight courier service, by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery or e-mail transmission (if an e-mail address is provided), addressed as follows:

(a) If to CPKC:

Canadian Pacific Railway
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada
Attention: Chief Operating Officer

(b) If to G&W:

Genesee & Wyoming Inc.
20 West Avenue
Darien, Connecticut 06820

Attention: General Counsel

E-mail: LegalNotices@gwrr.com

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Anthony F. Vernace
Email: AVernace@stblaw.com
Facsimile No.: (212) 455-2502

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

16.09 Announcements. CPKC and G&W shall consult with one another with regard to all press releases and other announcements issued concerning the transactions contemplated by this Agreement at or prior to Closing. Except as necessary as a result of public disclosure requirements under applicable Laws or the applicable rules and regulations of any Governmental Authority or stock exchange (in which case the party proposing to issue such press release or make such public announcement shall use its commercially reasonable efforts to consult in good faith with the other party before issuing any such press release or making any such public announcement), neither CPKC nor G&W shall issue any such press releases or other announcement or publicity without the prior written consent of the other party hereto at or prior to Closing. Notwithstanding anything to the contrary, in no event shall the foregoing be construed

to restrict or prevent CPKC or G&W or any of their respective Affiliates from making communications pursuant to or regarding this Agreement (and the transactions contemplated hereby) to existing or prospective suppliers, customers and employees of any Affiliate of such Person.

16.10 Entire Agreement. This Agreement, including the Exhibits hereto and other instruments and documents referred to herein or delivered pursuant hereto or in connection herewith, and the Confidentiality Agreement represents the entire understanding of the parties hereto, supersedes all prior oral or written memoranda and agreements and understandings between the parties with respect to the subjects herein, and may not be supplemented or amended, except by a written instrument executed by and delivered to each of the parties hereto designating specifically the terms and provisions so supplemented and amended.

16.11 Headings. Article, section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

16.12 Conflicting Terms. In the event that any of the terms or provisions of this Agreement violate, conflict with or are inconsistent with any of the terms or provisions of any of the agreements and instruments referred to herein or delivered pursuant hereto or in connection therewith, the terms and provisions of this Agreement shall govern and control for all purposes thereunder and hereunder.

16.13 Limitation on Benefits. Except as provided in Article XV, nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be

entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement, and all other documents or instruments called for hereunder shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

16.14 Severability. If any clause or provision of this Agreement, or the performance of any action related thereto, at the time such fulfillment or performance shall be due, shall be deemed by a court of competent jurisdiction to be unlawful or otherwise invalid or unenforceable, or to exceed the limit of validity prescribed by Law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity; and if any clause or provision contained in this Agreement operates or would operate prospectively to invalidate this Agreement, in whole or in part, then such clause or provision only shall be held ineffective, as though not herein or therein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

16.15 Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for any particular number of counterparts; but rather any number of counterparts shall be sufficient so long as those counterparts contain the respective signatures of, or on behalf of, all of the parties hereto. Signatures delivered by DocuSign or PDF shall be binding to the same extent as an original.

16.16 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed in that State without regard to any conflicting choice of law principles of that (or any other) State. **ALL ACTIONS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE HEARD AND DETERMINED IN THE DELAWARE COURT OF CHANCERY, AND IF SUCH COURT DOES NOT HAVE JURISDICTION, ANOTHER DELAWARE STATE COURT AND IF NO SUCH COURT HAS JURISDICTION THE FEDERAL COURTS SITTING IN THE STATE OF DELAWARE, AND THE PARTIES HERETO HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING.**

(b) Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated hereby. Each of the parties hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the transactions contemplated hereby, as applicable, by, among other things, the mutual waivers and certifications in this Section 16.16.

16.17 Specific Performance. The parties hereto agree that irreparable damage may occur in the event that any provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to enforce specifically the performance of this Agreement in accordance with its terms. Except as otherwise provided in this Agreement, the foregoing is in addition to, and not in lieu of, any other rights a party hereto may have in respect of a breach of this Agreement, whether at law or in equity.

[Signatures on next page.]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

CANADIAN PACIFIC RAILWAY COMPANY

By: _____
Name:
Title:

GENESEE & WYOMING INC.

By: _____
Name:
Title:

GENESEE & WYOMING CANADA INC., solely
for purposes of Section 15.02(b) of this Agreement

By: _____
Name:
Title:

Exhibit Index	
Document	Exhibit Reference
Rail Line – Map and Legal Description	
Hoadley Subdivision – Map and Legal Description	[Draft]
Scotford Lands – Map and Legal Descriptions	[Draft]
AIH Map	
AIH Operating Rights and Interchange Agreement	Draft
Amended Interchange Agreement – KCS / MNBR	
Assignment and Assumption Agreement	Draft
Bill of Sale	Draft
CPKC Right of First Refusal	Draft
Deed	
Excluded Assets	Draft
Hoadley Operating Rights & Interchange Agreement	Draft
Office Lease Waiver Agreement	Draft
CPKC Officer's Certificate	Draft
G&W Officer's certificate	Draft
OVR Lease Waiver Agreement	Draft
Plot 6 Map and Legal Description	
Plot 6 Right of First Refusal	Draft
Plot 21 Map and Legal Description	
Plot 21 Easement Agreement	
Plot 21 Easement Area Map	
Rate Divisional Agreement	Draft
Retained Trackage Rights Agreement	Draft
Scotford Easement Agreement	Draft
Second Train Trigger	Draft
Termination of Haulage Agreement -- CPKC / MNBR	Draft
Trackage Rights Agreement -- AGR / KCS	Draft
[Valuation of assets exchanged for MNBR Transferred Assets]	

[US Tax Allocation]	
[Valuation of assets exchanged for Canadian Transferred Assets]	
[Allocation of Canadian Transferred Assets]	
Prorations	Draft

Index to Schedules	
Schedule	Reference
Assumed Contracts - MNBR	[Definition of Assumed Obligations]
Assumed Contracts - Canada	[Definition of Assumed Obligations]
MNBR Licensed Assets	[Definition of MNBR Licensed Assets]
MNBR building leases, track leases, trackage rights etc.	Schedule 2.01(a)(ii)
MNBR Real Property Interests owned, leased, used or held for use	Schedule 2.01(a)(iv)
MNBR franchises, privileges, licenses and Permits	Schedule 2.01(a)(v) hereto
MNBR Facilities Services Agreements	Schedule 2.01(a)(vi)
MNBR Overlap Contracts	Schedule 2.01(a)(vii)
Hoadley building leases, track leases, trackage rights etc.	Schedule 3.01(a)(i)(b)
Hoadley Real Property Interests owned, leased, used or held for use	Schedule 3.01(a)(i)(d)
Hoadley franchises, privileges, licenses and Permits	Schedule 3.01(a)(i)(e)
Hoadley Facilities Services Agreements	Schedule 3.01(a)(i)(f)
Hoadley Overlap Contracts	Schedule 3.01(a)(i)(g)

Exceptions to Overlap Contracts	Schedule 7.11
G&W No conflicts; Consents of third parties	Schedule 8.02
G&W Parties in possession of rail line	Schedule 8.04(b)
G&W Employment Matters	Schedule 8.05(c)
G&W Litigation	Schedule 8.06
G&W Compliance with law	Schedule 8.07(a)
G&W citations, notices of violations or notices of investigation etc.	Schedule 8.07(b)
G&W Absence of changes	Schedule 8.08
G&W Satisfaction of amounts due under Assumed Contracts	Schedule 8.10
G&W Disclosed Environmental Conditions	Schedule 8.12(a)
MNBR Real Property Leases	Schedule 8.13(a)
G&W undisclosed liabilities	Schedule [8.14]
CPKC No conflicts; Consents of third parties	Schedule 9.02
CPKC Parties in possession of Hoadley	Schedule 9.04(b)
CPKC Parties in possession of Scotford	Schedule 9.05(b)
CPKC Employment Matters	Schedule 9.06(I)
CPKC Litigation	Schedule 9.07
CPKC Compliance with law	Schedule 9.08(a)
CPKC citations, notices of violations or notices of investigation etc.	Schedule 9.08(b)
CPKC Absence of changes	Schedule 9.09
CPKC Satisfaction of amounts due under Assumed Contracts	Schedule 9.11
CPKC Disclosed Environmental Conditions	Schedule 9.13(a)

CPKC Real Property Leases	Schedule 9.14
CPKC undisclosed liabilities	Schedule 9.15
G&W Closing Consents	Schedule 12.06

Exhibit DD

DEFINITION OF 2nd TRAIN TRIGGER

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RETAINED TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT is entered into as of this ___ day of ____, 2023, by and between MERIDIAN & BIGBEE RAILROAD, L.L.C., an Alabama limited liability company, hereinafter referred to as “MNBR”, and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, d/b/a CANADIAN PACIFIC KANSAS CITY, a Missouri corporation, hereinafter referred to as “CPKC.” Sometimes hereinafter, each may be referred to as a “Party” and sometimes collectively referred to as the “Parties.”

WITNESSES THAT WHEREAS:

- A. MNBR has entered into an arrangement with CPKC to sell the line of railroad between MP 0.0+/- in Meridian, MS and MP 50.4+/- (based on the current MNBR timetable attached as Schedule E) in Myrtlewood, AL; and
- B. Pursuant to the Transaction Agreement, dated as of ____, 2023 between Canadian Pacific Railway Company and Genesee & Wyoming Inc. (the “**Transaction Agreement**”), MNBR is retaining certain rights for MNBR’s use of the Subject Trackage described herein in accordance with the terms and conditions set forth below;

NOW THEREFORE, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Defined Terms.** As used in this Agreement, including the Recitals hereto, the following terms shall have the meanings set out below:

(a) “**Affiliate**” means with respect to a Party, any person that controls, is controlled by or is under common control with that Party.

(b) “**AGR**” means Alabama & Gulf Coast Railway LLC.

(c) “**Capital Improvements**” means Improvements which require capital investments and expenditures to materially improve or upgrade the Subject Trackage, as defined by CPKC capital accounting procedures.

(d) “**Cars**” means each loaded or empty railway freight car, locomotive or similar equipment, handled by MNBR over the Subject Trackage.

(e) “**CSXT**” means CSX Transportation, Inc.

(f) “**Emergency Response Plan**” means the emergency response plan to be prepared by MNBR as described in Article 8.2.

(g) “**Existing Customers**” means those existing customers identified in Schedule D or their successors at their respective existing facilities identified by milepost in Schedule D as those facilities may be modified or expanded from time to time, provided that any such modification or expansion to an existing facility does not result in a material change in use of the facility.

(h) “Hazardous Substance” means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing

- (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances;
- (ii) substances that endanger the health and safety of persons; and
- (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.

(i) “Improvements” means any building, structure, trackage or any other work of a physical character.

(j) “NS” means Norfolk Southern Railway Company.

(k) “Operating Plan” has the meaning set forth in Section 2.2.

(l) “Operating Rules” means CPKC’s operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, supplements and replacements thereto as communicated from time to time by CPKC’s designated operating officer to MNBR’s designated operating officer.

(m) “Operating Window” means the daily time period or periods set forth in the Operating Plan during which MNBR may operate on the Subject Trackage.

(n) “Subject Trackage” means CPKC’s trackage between the points designated as Point “A”, being approximately mile post 0.0+/- near Meridian, MS, and Point “B”, being approximately mile post 50.4+/- (based on the MNBR timetable attached as Schedule E) near Myrtlewood, AL as shown in Schedule “A”. The Subject Trackage includes all track, track connections, facilities and appurtenances, signals and switches located between Points “A” and “B” as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of CPKC.

(o) “Trackage Rights” means the non-exclusive overhead and exclusive local trackage rights described in Article 2.1.

(p) “Trackage Rights Fee” means the fees payable by MNBR to CPKC described in Article 10.2.

(q) “Trains” means all trains, locomotives, Cars, cabooses and equipment owned, leased, used or otherwise in the possession of, control of or under operation by MNBR.

- 1.2 **Schedules.** The following Schedules are attached to and form a part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Subject Trackage Sketch Plan
B	Insurance Coverage
C	Rate Escalation
D	Existing Customers
E	MNBR Timetable

ARTICLE 2

TRackage RIGHTS

- 2.1 Subject to the terms and conditions herein provided, MNBR hereby retains (i) the exclusive right to operate its Trains with its own crews over the Subject Trackage to (a) serve Existing Customers and (b) interchange with, and handle freight rail traffic to and from, AGR at or near Myrtlewood, AL for interchange with CPKC and NS in Meridian, MS and (ii) the non-exclusive right to operate its Trains with its own crews over the Subject Trackage to (a) interchange with, and handle freight rail traffic to and from CSXT at or near Myrtlewood, AL for interchange with NS in Meridian, MS and (b) if requested by CPKC, handle CPKC-CSXT overhead freight rail traffic between Meridian, MS and Myrtlewood, AL (the “**Trackage Rights**”). MNBR's use of the Subject Trackage shall be in common with CPKC and any other user(s) of the Subject Trackage and the rights of CPKC and such other user(s) to use the Subject Trackage shall not be diminished by this Agreement.
- 2.2 In order to avoid conflicting movements and ensure the safe operation of both Parties on the Subject Trackage, the Trackage rights are subject at all times to the following conditions:
- (a) MNBR must operate on the Subject Trackage only during the Operating Windows as established in the Operating Plan, except as may be otherwise agreed to by the Parties;
- (b) CPKC shall manage the Subject Trackage to facilitate both Parties' operations and provide efficient and non-discriminatory movement of MNBR's trains for the purpose of MNBR's interchange with CPKC and NS at Meridian and with CSX and AGR at or near Myrtlewood;
- (c) MNBR's operations on the Subject Trackage are limited to local and overhead freight traffic for which it has retained the exclusive and non-exclusive rights described in Article 2.1 of this Agreement, except as may otherwise be agreed in writing between the Parties; and
- (d) the Parties shall comply with the then current CPKC Operating Plan (the “Operating Plan”). {

[REDACTED]

2.3 MNBR shall be solely responsible for securing any other operating rights and privileges required to operate its trains to and from the Subject Trackage.

2.4 The Parties acknowledge and agree that CPKC has the residual common carrier obligation with respect to any traffic deemed exclusive under Section 2.1 if (a) MNBR were to terminate this Agreement pursuant to Section 12.2, (b) this Agreement is suspended pursuant to Section 12.3 or Schedule B, Section 1.2, or (c) MNBR fails to meet its common carrier obligation to serve an Existing Customer as determined by the Surface Transportation Board.

2.5 In the event that CPKC becomes obligated to provide service in accordance with its residual common carrier obligation under either (b) or (c) of Article 2.4 herein, MNBR agrees that it shall {{

[REDACTED]

2.6 {{ [REDACTED] }}

ARTICLE 3 **RESTRICTIONS ON USE**

3.1 The Trackage Rights are only for the movement of local and overhead freight traffic as described in Article 2.1 herein. MNBR shall not have the right to:

(a) set off, pick up, or store equipment or switch industries hereinafter located upon all or any part of the Subject Trackage, except as necessary for the handling of locomotives, Cars or cabooses bad ordered en route;

(b) serve any industry, team or siding track hereinafter located along the Subject Trackage without the express written consent of CPKC unless such track is located at an Existing Customer or use of such track is expressly permitted in the Operating Plan;

(c) permit or admit, without permission in writing from CPKC, any third party to the use of all or any part of the Subject Trackage, nor contract, or make any agreement to provide haulage over the Subject Trackage of Trains or Cars of any third party which in the normal course of business would not be considered as the Trains or Cars of MNBR;

(d) enter or exit the Subject Trackage at any point other than those designated on Schedule "A" attached hereto;

(e) interfere with the loading or unloading operations of any shipper located adjacent to the Subject Trackage;

(f) obstruct or leave any Train or locomotive unattended on the Subject Trackage, or stop its Trains or locomotives on the Subject Trackage except in the case of mechanical failure or emergency;

(g) construct or alter tracks connecting to the Subject Trackage, including the construction, installation or alteration of any switches from the Subject Trackage without the express written consent of CPKC;

(h) construct, erect or place, or cause to be constructed, erected or placed on or near the CPKC Trackage any structure, signage, fixture or any other work without the prior written consent of CPKC; or

(i) fuel locomotives on the Subject Trackage, or load, unload or store any Hazardous Substance on the Subject Trackage, except as permitted under this Agreement and in accordance with the terms and conditions herein.

ARTICLE 4

MAINTENANCE OF CONNECTIONS TO SUBJECT TRACKAGE

4.1 Existing connections to the Subject Trackage or related facilities, which are jointly used by MNBR and CPKC under other existing agreements with other parties, shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

4.2 If, in the opinion of MNBR,

(a) new or upgraded connections are required for permitting entry to or exit from the Subject Trackage, or,

(b) other upgrading, including but not limited to capital capacity, switches, power switches, signals, communications and other works is required for operational efficiency of the MNBR service,

then CPKC may, in its sole discretion, acting reasonably, make such Improvements, and MNBR shall pay to CPKC the entire cost of such Improvements, including overhead and administrative costs, within 30 days of receiving an invoice. CPKC shall own and maintain the Improvements after installation.

ARTICLE 5
MAINTENANCE OF SUBJECT TRACKAGE

- 5.1 CPKC shall maintain, repair and renew the Subject Trackage with its own supervision and labor forces and shall maintain sufficient access on adjacent roadways as may be necessary for crews to access the Subject Trackage. CPKC shall keep and maintain the Subject Trackage to at least the same condition as the Subject Trackage is in on the date of this Agreement, however, CPKC shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Subject Trackage and CPKC does not guarantee the conditions of the Subject Trackage or that operations over it will not be interrupted. The Parties also acknowledge and agree that in order for CPKC to perform its maintenance obligations, the Subject Trackage will be out of service from time to time for the required work blocks and CPKC shall not be liable to MNBR for any loss due to delay or interruption resulting from CPKC's performance of maintenance, repair, or renewal of the Subject Trackage. { [REDACTED] }
- 5.2 MNBR's use of the Subject Trackage shall be at its own risk and on an "as is" basis. Notwithstanding any other provision of this Agreement, MNBR shall not by reason of failure or neglect on the part of CPKC to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CPKC or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees, for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for loss of any nature suffered by MNBR resulting from such failure or neglect including without limitation any interruption or delay.
- 5.3 Nothing in this Agreement shall preclude CPKC from discontinuing or abandoning rail operations on any part of the Subject Trackage at any time, subject to CPKC fulfilling the applicable requirements set out by the Surface Transportation Board. Upon such discontinuance or abandonment, this Agreement shall automatically terminate as to the portion of the Subject Trackage that has been discontinued. In the event CPKC shall seek regulatory authority to discontinue or abandon rail operations on any part of the Subject Trackage, MNBR agrees to cooperate with CPKC and to contemporaneously seek regulatory authority to discontinue MNBR's trackage rights over that same part of the Subject Trackage.
- 5.4 CPKC shall not make any changes to the Subject Trackage that prevent or unreasonably interfere with MNBR's ability to exercise the Trackage Rights and/or serve the Existing Customers and/or interchange with AGR and CSXT.

ARTICLE 6
OPERATION AND MANAGEMENT OF SUBJECT TRACKAGE

- 6.1 The management and operation of the Subject Trackage shall be under the exclusive direction and control of CPKC. Subject to Section 2.2 and the terms of the Operating Plan, CPKC shall have the unrestricted right to change the management and the operations on and over the Subject Trackage as CPKC, in its sole judgment, may deem necessary, expedient or proper for the operation of the Subject Trackage.
- 6.2 MNBR shall comply with all applicable laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, while such Trains are being operated over the Subject Trackage. Notwithstanding any other provisions herein MNBR shall indemnify, protect, defend, and save harmless CPKC and its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CPKC or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, regulations and rules by any public authority or court of competent jurisdiction, when attributable solely to the failure of MNBR to comply with its obligations in this regard.
- 6.3 When operating over the Subject Trackage, MNBR's locomotives and crews shall be equipped with radios that are compatible with CPKC's radios to communicate with CPKC and any other operators on the Subject Trackage on radio frequencies then normally used in directing train movements on the Subject Trackage.
- 6.4 MNBR's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by the Operating Rules and equipped with such cab signals, and other safety equipment that is required by law or instruction for the operation over any or all of the Subject Trackage.
- 6.5 {{

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- 6.6 The operation of MNBR over the Subject Trackage shall at all times be in accordance with the Operating Rules; provided, however, that the Operating Rules shall be reasonable, just and fair between all Parties using the Subject Trackage and shall not unjustly discriminate against any of them.

- 6.7 MNBR trains while operating over the Subject Trackage shall not include locomotives, Cars or equipment that exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the Operating Rules without the prior consent of CPKC.
- 6.8 MNBR shall make arrangements with CPKC to have MNBR's employees who operate on the Subject Trackage qualified for operation thereon. MNBR shall pay to CPKC, promptly upon receipt of CPKC's invoice, any cost incurred by CPKC in connection with the qualification of such MNBR employees, as well as the cost of pilots furnished by CPKC, until such time as such MNBR employees are deemed by the appropriate examining officer of CPKC to be properly qualified for operation as herein contemplated. Notwithstanding anything to the contrary in Section 11, MNBR shall indemnify, protect, defend, and save harmless CPKC and its directors, officers, agents and employees from and against all fines, penalties and liabilities imposed on CPKC when attributable to the failure of MNBR to comply with the provisions of this section.
- 6.9 CPKC may request an investigation if an MNBR employee working on the Subject Trackage is alleged to have violated CPKC's rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under applicable laws, regulations or agreement rules. MNBR will schedule the investigation and notify CPKC's Local Transportation Officer in the territory. MNBR must schedule the investigation within the time limits provided in the applicable agreement on MNBR's railroad. CPKC will provide its regulations, supplements, and safety rules to MNBR at no cost.
- 6.10 If CPKC requests an investigation, CPKC shall have the right to exclude from the Subject Trackage any employee of MNBR, except officers, who CPKC determines to be in violation of CPKC's rules, regulations, orders, practices, or instructions as the result of CPKC's investigation or hearing described below.
- 6.11 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein CPKC desires to bar MNBR's employee from service on the Subject Trackage pending an investigation by CPKC, immediate verbal notification will be given to the appropriate Transportation Officer of MNBR so that proper written notice can be issued to the employee.
- 6.12 If CPKC requests an investigation, an officer of MNBR will conduct the investigation, but an officer of CPKC may be present. After the investigation is concluded, a Transportation Officer of MNBR will arrange to assess discipline, within the applicable time limits. If CPKC recommends dismissal, MNBR reserves the right to change the recommendation to the extent of barring the individual from operating over the Subject Trackage. MNBR shall release, indemnify, defend, and save harmless CPKC and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- 6.13 If the disciplinary action is appealed by the employee of MNBR to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage by reason of such occurrence (unless

an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds CPKC's continued exclusion of such employee).

- 6.14 MNBR shall conduct its operations in an efficient manner with a view to maximizing the capacity of the Subject Trackage and ensure that its crews carry out the prompt, efficient and safe movement of MNBR Trains over the Subject Trackage.
- 6.15 In the event that a Train of MNBR shall be forced to stop on the Subject Trackage due to mechanical failure of MNBR's equipment or any other cause not resulting from an accident or derailment, and such Train is unable to proceed, or if a Train of MNBR fails to maintain the speed required by CPKC on the Subject Trackage, or if in emergencies, crippled or otherwise defective Cars are set out of MNBR's trains on the Subject Trackage, CPKC shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such Trains, locomotives or Cars, or to properly move the disabled equipment off the Subject Trackage, and MNBR shall reimburse CPKC for the cost of rendering any such assistance.
- 6.16 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective Cars in order to move them off the Subject Trackage, such work may be done by CPKC, at its option, and MNBR shall reimburse CPKC for the cost thereof.
- 6.17 MNBR shall maintain the insurance coverage required by Schedule "B" attached hereto.

ARTICLE 7 **CLEARING OF WRECKS**

- 7.1 Whenever MNBR's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CPKC shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that CPKC in its sole discretion may request a third party to perform such rerailling service.
- 7.2 Subject to Article 11, the cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be invoiced to MNBR and paid by MNBR in accordance with the provisions of Article 10 hereof. All locomotives, Cars, and equipment that are owned by or under the management and control of or used by MNBR at the time of such wreck shall be promptly delivered to MNBR, unless the Parties otherwise agree.

ARTICLE 8 **ENVIRONMENTAL**

- 8.1 In the event that MNBR is required to transport Hazardous Substances over the Subject Trackage, MNBR shall:
 - (a) comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the,

Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and

(b) ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.

8.2 MNBR shall prepare and have at all times, an Emergency Response Plan with respect to its response to incidents or derailments involving Hazardous Substances over the Subject Trackage and upon request provide a copy to CPKC. The Emergency Response Plan must include at a minimum:

(a) reporting and response procedures in the event of a derailment, accident or spill on the Subject Trackage;

(b) emergency response service providers and contacts and their phone numbers; and

(c) incident reporting phone numbers including phone numbers for CPKC incident reporting and local CPKC personnel.

8.3 In the event any accident or derailment involving MNBR rail cars, including rail cars carrying Hazardous Substances shall occur on any segment of the Subject Trackage, MNBR agrees to:

(a) immediately notify local emergency response service providers (including the local fire stations) in accordance with its Emergency Response Plan, and ensure that such local emergency response service providers have appropriate information.

(b) immediately report any release, leak, deposit or spill of a Hazardous Substance (e.g. fuel spill from an accident) to CPKC (Network Management Centre -Calgary 1-800-795-7851) and/or such other number as directed by CPKC in writing), whether or not such releases are required to be reported to any federal, state or local authority, and to any regulatory authorities as required by law.

(c) promptly respond to an accident, or a leak, spill or deposit of any substance (including without limitation any Hazardous Substance, waste or pollutant), except to the extent such leak, spill or deposit is de minimis in nature and results from the day to day operation of Trains by MNBR over the Subject Trackage. MNBR shall take all reasonable actions to contain the spill and respond in accordance with its Emergency Response Plan; provided, however that CPKC may elect to reasonably remediate, repair and restore the roadbed, track and related structures impacted by any Hazardous Substance, at the expense of the MNBR.

(d) provide a written follow-up report to CPKC within five (5) working days of any release, leak, deposit or spill on the Subject Trackage, or any event on or affecting CPKC property which constitutes an offense or is reportable under any laws, by-laws, or regulations relating to the protection of the environment, or is in breach thereof. Such follow-up report will describe the incident, substance and volume released, and measures undertaken or planned to clean up and remove the released substance and any contaminated soil, water and materials and waste.

(e) provide CPKC with copies of any and all reports made to any governmental agency that relate to such incidents and/or releases. In addition, MNBR shall provide CPKC with a copy of any alleged violation of applicable environmental laws relating to such incident on the Subject Trackage, as well as a copy of any written responses made by MNBR to governmental authorities regarding said violations.

(f) commence and complete, at CPKC's request, the cleanup, disposal, and remediation of any spill or environmentally unsound condition occurring on the Subject Trackage as a result of MNBR's operations over the Subject Trackage. MNBR shall completely clean up any such spill or condition; shall dispose of any contaminated soil or waste in a properly licensed disposal facility; and shall replace contaminated soils with clean fill as appropriate under the circumstances. MNBR shall demonstrate to CPKC's reasonable satisfaction that any impacted lands and any impacted adjacent lands have been restored to a condition existing immediately prior to the contamination.

(g) if MNBR and CPKC are in disagreement as to whether any such release has been completely cleaned up, the contaminated soil or waste properly disposed of and replaced with appropriate clean fill, MNBR shall retain a reputable environmental consulting firm to review MNBR's activities and report whether MNBR has fulfilled its obligations. If MNBR's obligations have not been fulfilled, MNBR shall take further action as is necessary to rectify any deficiencies and obtain a report from the environmental consultant verifying the same.

(h) be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from MNBR's operations on the Subject Trackage.

8.4 CPKC may from time to time perform inspections and environmental, safety, risk and security assessments of the Subject Trackage. CPKC may at any time implement any environmental, safety or security measures, procedures or requirements that it considers necessary or desirable, in its reasonable opinion. CPKC agrees to notify MNBR regarding any such measures, procedures or requirements and MNBR agrees to cooperate, as necessary, in implementing such measures.

8.5 The provisions of this Article 8 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 9

MILEAGE AND CAR HIRE

9.1 All mileage and car hire charges accruing on cars in MNBR's Trains on the Subject Trackage shall be on MNBR's account, to be reported and paid by MNBR.

ARTICLE 10

BILLING AND PAYMENT OF CHARGES

10.1 MNBR shall on or about the fifteenth (15th) day of each month provide CPKC with an accounting of its use of the Subject Trackage for the prior month. Such accounting shall be furnished to CPKC's Manager Interline Agreements or designated representative and shall include a detailed listing of loaded and empty Car movements over the Subject Trackage. Such detailed listing shall be forwarded to CPKC in an electronic format, and shall include car initial, numbers and contents, date of movements and the points traversed over the Subject Trackage and such other information as CPKC may reasonably

request. The Parties shall exchange data on all loaded and empty cars electronically or by any subsequent means as mutually agreed.

- 10.2 The Trackage Rights Fee payable by MNBR to CPKC for the Trackage rights shall be as follows:

(a) MNBR will pay CPKC an amount of {{ [REDACTED] }} USD per car mile, loaded or empty, in each direction, escalated pursuant to Article 10.3 herein. The Parties agree for the purposes of this calculation that the length of the Subject Trackage between Meridian and Myrtlewood is 50.4 miles.

(b) For the purposes of this Article 10.2, "Car" shall mean one (1) rail car, whether loaded or empty. In the case of an articulated rail car of two (2) or more platforms, each platform shall be counted as one (1) rail car, whether loaded or empty, subject to modification by mutual agreement of the Parties based upon changes in railroad technology. Each locomotive shall be counted as two (2) cars.

- 10.3 {{ [REDACTED] }}

- 10.4 The Trackage Rights Fee that MNBR is required to pay to CPKC under the provisions of this Agreement is in addition to any and all other costs, expenses and charges specifically provided for in this Agreement.

- 10.5 The Parties expressly agree that the Trackage Rights Fee to be paid by MNBR shall not, in any case, include any cost or expense which may be incurred by CPKC on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by MNBR upon or over the Subject Trackage and MNBR shall indemnify CPKC as provided for in Articles 8 and 11 herein.

- 10.6 Invoices rendered pursuant to the provisions of this Agreement, other than the Trackage Rights Fee, shall include direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed by CPKC for MNBR.

- 10.7 MNBR shall pay CPKC within {{ [REDACTED] }} days of its receipt of CPKC's invoice. The payment of invoices by MNBR shall not be delayed or payment refused or reduced on the face amount of the invoice rendered due to errors in supporting details which are not material relative to the invoiced amount, but the invoice shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of CPKC responsible for the issuance of the invoice; provided that no exception to any charge shall be honored, recognized or considered if filed after the expiration of two (2) years from the last day of the calendar month during which the invoice containing said charge was rendered.

- 10.8 CPKC reserves the right to audit the records and activities of MNBR solely for the purpose of verifying MNBR's compliance with the provisions of this Agreement. Without limiting the generality of the foregoing, MNBR shall keep and maintain true and correct books, records

and accounts with respect to its volume of Cars along with any annual statements and summaries, for a period of three (3) years after the Term of this Agreement. MNBR shall, upon request of CPKC, make available on reasonable advance notice and during normal business hours and permit CPKC during such period to inspect, make copies of, and audit all such records. If there is any revision to charges as a result of an audit, payment shall be made within thirty (30) days of the audit. The provisions of this Article 10 shall survive the termination of this Agreement.

ARTICLE 11

LIABILITY

As between the Parties, responsibility for any loss or destruction of, or damage to, any property whatsoever, any damage to or destruction of the environment (including without limitation land, air, water, wildlife, and vegetation), and any injury to or death of any person or persons whomever (including employees of MNBR and CPKC), resulting from, arising out of, incidental to or occurring in connection with this Agreement (in each case, "**Loss or Damage**"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise provided in Article 11.8 and Article 11.9 hereof):

11.1 For purposes of this Article 11, the following words shall have the meanings set forth in this Article 11.1:

(a) "**Cars**" shall mean loaded and empty freight cars, trailers and containers (including lading) and locomotives. "**MNBR Cars**" shall mean Cars in the revenue and/or car hire account of MNBR. "**CPKC Cars**" shall mean Cars in the revenue and/or car hire account of CPKC or a Foreign Railroad.

(b) "**Equipment**" shall mean cabooses, hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are located on the trackage upon which such occurrence takes place, or on adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon. "**CPKC Equipment**" shall mean Equipment operated by or in the account of CPKC and "**MNBR Equipment**" shall mean Equipment operated by or in the account of MNBR.

(c) "**Foreign Railroad**" shall mean a railroad other than (i) MNBR or (ii) CPKC and its Affiliates.

11.2 Each Party shall comply with all applicable federal and state laws or regulations, and all applicable rules, regulations or orders promulgated by any municipality, board or commission. If any failure of either Party to comply with such laws, rules, regulations or orders in respect to the use of the Subject Trackage results in any fine, penalty, cost or charge being assessed against the other Party, the Party which failed to comply shall reimburse promptly and indemnify the other Party for such amount.

11.3 The employees of either Party while operating, maintaining or directing operations along the Subject Trackage shall not be considered as joint employees but will remain the sole employees of the operating Party, maintaining Party or the Party directing operations. In the event of any injury or death of a Party's employee on the Subject Trackage regardless

of the activity being performed, that Party will assume all Loss or Damage related thereto except as otherwise provided for in Article 11.8 of this Agreement.

- 11.4 Whenever Loss or Damage occurs as a result of an incident involving only one train, the Party operating such train shall assume and bear all liability for Loss or Damage resulting from or arising out of such incident, including without limitation Loss or Damage to CPKC Cars, CPKC Equipment, MNBR Cars, MNBR Equipment, third party Cars and Equipment moving on such train, trackage, property and any injury or death of any person or persons.
- 11.5 Whenever Loss or Damage occurs as a result of an incident involving more than one train, and at least one of such involved trains is a train operated by CPKC, and at least one of such involved trains is a train operated by MNBR, then CPKC shall assume and bear all liability for Loss or Damage to Cars and Equipment (including MNBR Cars and MNBR Equipment) moving on such train(s) operated by CPKC, and MNBR shall assume and bear all liability for Loss or Damage to Cars and Equipment (including CPKC Cars and CPKC Equipment) moving on such train(s) operated by MNBR. In such circumstances, as between CPKC and MNBR, any Loss or Damage to trackage or to property, and any injury or death of any other person or persons, so occurring shall be allocated equally between CPKC and MNBR.
- 11.6 For the purposes of assigning responsibility for Loss or Damage under this Article 11, as between CPKC and MNBR, trains, Cars and Equipment of a Foreign Railroad, including passenger trains, shall be considered the trains, Cars and Equipment of CPKC.
- 11.7 **IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.**
- 11.8 Notwithstanding anything to the contrary in this Article 11, whenever Loss or Damage occurs, and such Loss or Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Article 11.8, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."
- 11.9 Notwithstanding any provision of this Article 11 to the contrary, each Party shall assume and bear all responsibility for any Loss or Damage caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.
- 11.10 If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so

notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Article 11.

- 11.11 In every case of death or injury suffered by an employee of MNBR or CPKC, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this Agreement prior to any of the respective date(s) upon which any such future instalments are to be paid.
- 11.12 Whenever any liability, cost or expense is assumed by or allocated to a Party under this Article 11, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party and its Affiliates, and their respective directors, officers, agents and employees from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees, and (ii) defend such indemnities against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.
- 11.13 Each Party shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.
- 11.14 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Article 11; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.
- 11.15 No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds {{[REDACTED]}}.

ARTICLE 12

TERM AND TERMINATION/SUSPENSION

- 12.1 This Agreement shall be effective the day and the year first written above and shall remain in full force and effect for thirty (30) years (the "**Term**"). Following the Term, this Agreement shall automatically renew for successive thirty (30) year terms.

12.2 Notwithstanding any other provision in this Agreement, MNBR may terminate this Agreement on no less than ninety (90) days prior written notice to CPKC

12.3 CPKC may, at its sole option and without restricting any other legal right or remedy it may have, immediately suspend the Trackage Rights retained by MNBR under this Agreement upon written notice to MNBR if:

(a) MNBR breaches or fails to observe or perform any provision of this Agreement, and such breach continues for a period of fifteen (15) calendar days after CPKC shall have first sent written notice to MNBR of such breach;{{

}}

(b) MNBR fails to maintain any governmental or regulatory approval required in order to conduct railway operations on the Subject Trackage, and such failure continues for a period of (60) sixty calendar days after CPKC shall have first sent written notice to MNBR of such failure;{{

}}

(c) MNBR becomes insolvent or makes an assignment in bankruptcy or a general assignment for the benefit of creditors or a proposal under any applicable bankruptcy legislation, or if a petition in bankruptcy is filed or presented against MNBR, or if MNBR otherwise becomes subject to or institutes any proceedings seeking to adjudicate it as bankrupt or insolvent, or if a receiver of any MNBR undertaking, property or assets is appointed, or if an order is made or a resolution is passed or proceedings are instituted for the winding up or dissolution of MNBR;

(d) MNBR ceases or threatens to cease carrying on its business;

(e) MNBR fails to observe or perform any of the terms of this Agreement where such failure, in the reasonable opinion of CPKC, creates a danger or raises serious safety concerns with respect to CPKC's operations; or

(f) CPKC obtains authorization to abandon or discontinue service on all or a portion of the Subject Trackage, but solely with respect to the portion so abandoned or discontinued.

12.4 The suspension of the Trackage Rights hereunder shall cease when MNBR demonstrates to CPKC's reasonable satisfaction that MNBR is able to resume the proper performance of its common carrier obligation. MNBR will deliver a prior written notice to CPKC specifying the date MNBR intends to resume operations. CPKC and MNBR shall meet as promptly as practicable thereafter to discuss a plan that reflects how MNBR intends to resume proper performance of its common carrier obligation and how it plans to prevent the re-occurrence of the suspension of the Trackage Rights.

- 12.5 Suspension or termination of this Agreement for any reason shall not relieve or release any Party from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the suspension or termination hereof.
- 12.6 In the event of termination of the Trackage Rights over all or a portion of the Subject Trackage, MNBR shall cooperate with CPKC in obtaining STB discontinuance authority for the Trackage Rights terminated under this Agreement.

ARTICLE 13

CONFIDENTIALITY

- 13.1 During the Term and for a period of ten years thereafter, the Parties agree to keep the terms of this Agreement confidential and not to disclose this Agreement or any part thereof to any third party or other entity, for any reason, without the express written consent of the other Party; provided always that (i) MNBR may disclose the terms of this Agreement (a) to regulatory authorities or (b) without CPKC's consent in the event MNBR, or its controlling shareholder(s), enters into discussions to sell all or a portion of its shares (or other similar transaction) and (ii) that CPKC may disclose the terms of this Agreement without MNBR's consent in the event that CPKC enters into discussions to sell, lease or otherwise dispose of all or a portion of the Subject Trackage. Notwithstanding the foregoing, the Parties may disclose the terms and conditions of this Agreement to any Affiliate, auditor, legal counsel and insurance carrier or broker that needs to know such terms and conditions.

ARTICLE 14

DISPUTE RESOLUTION

- 14.1 The Parties agree that all disputes concerning the interpretation and application of the terms of this Agreement shall be resolved as follows:

(a) First, by referral to the appropriate senior officers of the Parties for discussion, with the aim of reaching a mutually acceptable resolution; and

(b) Second, if the dispute cannot be resolved through discussion between such senior officers of the Parties within thirty (30) days of such referral, then either Party may refer the matter to binding arbitration by a single arbitrator conducted under the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be experienced in railroad matters and transportation law. The decision of the arbitrator shall be rendered within ninety (90) days of the Parties' submissions and shall be final and conclusive upon the Parties. Each Party shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator. Notification of a Party's intent to invoke arbitration is to be made in writing as prescribed in Article 15.1 herein.

ARTICLE 15
NOTICES

- 15.1 Any notice request, demand or other document required or permitted hereunder shall be in writing and shall be mailed by a recognized overnight courier service, by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery or e-mail transmission (if an e-mail address is provided), addressed as follows:

(a) if to CPKC:

Canadian Pacific Kansas City
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9 Canada
Attention: Chief Operating Officer

with a copy to:

Canadian Pacific Kansas City
Building 1
7550 Ogden Dale Road SE
Calgary, AB T2C 4X9
Attention: Chief Legal Officer

(b) if to MNBR:

Meridian & Bigbee Railroad, L.L.C.
13901 Sutton Park Drive South, Suite 270
Jacksonville, FL 32224
Attention: President
E-mail: LegalNotices@gwrr.com

with a copy to:

Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
Attention: General Counsel
E-mail: LegalNotices@gwrr.com

Any notice, if given by courier, shall be deemed to have been given or made on the date delivered. Either Party may provide changes to its address or addressees by furnishing a notice of such change to the other Party, in the same manner as provided above for all other written notices.

ARTICLE 16
SUCCESSORS AND ASSIGNS

- 16.1 The rights, benefits, obligations or liabilities of MNBR under this Agreement are personal to MNBR and may not be assigned or subcontracted by MNBR without the prior written consent of CPKC, which CPKC may withhold in its sole discretion, or grant upon such terms and conditions as CPKC deems in its sole discretion to be necessary or desirable in the circumstances. Any assignment or subcontracting by MNBR of any right, benefit, obligation or liability of MNBR under this Agreement, absent such prior written consent, shall be void.
- 16.2 Notwithstanding Article 16.1, the assignment of this Agreement to an Affiliate of MNBR will not require CPKC's consent but will require prior written notice to CPKC. In such case, the Affiliate will be bound by all the terms and conditions of this Agreement.
- 16.3 CPKC may assign any or all of its rights, benefits, obligations or liabilities under this Agreement with notice to MNBR.

ARTICLE 17
REGULATORY APPROVAL

- 17.1 Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), MNBR will initiate and thereafter diligently pursue, at its own cost and expense, an appropriate application to secure such approval.
- 17.2 The Parties shall assume and hold one another harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

ARTICLE 18
GOVERNING LAW

- 18.1 This Agreement shall be governed and interpreted in accordance with the laws of the State of New York without regard to conflict of law rules.

ARTICLE 19
FORCE MAJEURE

- 19.1 A Party's duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; epidemic or quarantine restriction; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the force majeure event. The

Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

ARTICLE 20
GENERAL

- 20.1 Nothing in this Agreement shall limit the right of CPKC to admit other companies to use, operate, dispatch or maintain the Subject Trackage or any Party thereof on such terms and conditions as are satisfactory to CPKC.
- 20.2 All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 20.3 In this Agreement where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.
- 20.4 References to a "Person" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context.
- 20.5 All words, terms and phrases used in this Agreement and not otherwise defined herein shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.
- 20.6 This Agreement may not be modified or amended except in writing and executed by MNBR and CPKC.
- 20.7 No waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party, and then only in the specific instance and for the specific purpose given.
- 20.8 This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and prior agreements and memorandums between the Parties relating to the subject matter hereof.
- 20.9 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Signature page follows.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
d/b/a CANADIAN PACIFIC KANSAS CITY

By: _____

Name: _____

Title: _____

MERIDIAN & BIGBEE RAILROAD, L.L.C.

By: _____

Name: _____

Title: _____

SCHEDULE "A"

Subject Trackage



SCHEDULE "B"**Insurance Coverage**

1.1 MNBR, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this Agreement remains in force, the following insurances:

(a) Railroad Liability insurance with a limit of not less than {{[REDACTED]}} for any one loss or occurrence for personal injury, bodily injury, or damage to third party, including but not limited to CPKC property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:

- (i) CPKC and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of MNBR under this Agreement and incidental thereto;
- (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
- (iii) blanket contractual liability, to include the insurable liabilities assumed by MNBR under this Agreement;
- (iv) shall not exclude operations on or in the vicinity of the railway right of way, if applicable;
- (v) products and completed operations;
- (vi) insure against all Federal Employer's Liability Act claims for liability arising out of MNBR's operations under this Agreement; and
- (vii) sudden and accidental pollution, or named perils pollution including the release or dispersal of pollutants as a result of a collision, overturning or derailment of any vehicle or railway rolling stock.

(b) Automobile Liability insurance covering bodily injury and property damage in an amount not less than {{[REDACTED]}} Dollars per accident, covering the ownership, use and operation (including the loading and unloading) of any motor vehicles and trailers which are owned, non-owned, leased or controlled by MNBR and used in regards to this Agreement.

(c) "All Risks" property insurance covering MNBR's owned property and the property of CPKC in the care, custody, or control of MNBR, or for which MNBR has assumed liability, on a replacement cost basis. With respect to the property of CPKC, such policy shall contain a loss payable clause in favor of CPKC, and include CPKC as an additional insured.

Not more frequently than once every three years, at such times as MNBR's policies are subject to renewal, MNBR or CPKC may request reasonable changes to the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices and conditions in the insurance industry.

MNBR agrees that the insurance it maintains is primary and not excess of any other insurance that may be available. MNBR shall waive any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims where permissible under the insurance policies required under this Agreement.

MNBR shall provide CPKC with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims concerning this Agreement as soon as practicable after the damage, loss, incident or claim has been discovered. MNBR is responsible for any deductible and excluded loss under the insurance.

If MNBR fails to maintain the insurance required under this Agreement, CPKC may at its option suspend the Trackage Rights retained by MNBR under this Agreement upon no less than five (5) days' prior written notice.

1.2 **Replacement Insurance**

If the insurance procured by MNBR pursuant to this Schedule B takes the form of a claims made policy and is cancelled or allowed to expire without renewal, MNBR shall provide evidence of replacement insurance that provides coverage as required by Section 1.1. Such coverage must be retroactive to the original inception date of the cancelled or non-renewed policy. MNBR further agrees to promptly give notice to CPKC's Manager Interline Agreements of any claim or notice of incident, or notice of potential claim related to this Agreement, that is required to be reported to MNBR's liability insurance company.

1.3 **Notice to CPKC**

Each policy of insurance obtained by MNBR pursuant to Section 1.1 shall contain provisions requiring that the insurance carrier to endeavor to give CPKC, through its Manager Interline Agreements, at least 30 days' notice in writing of any proposed cancellation of any policy MNBR is required to maintain pursuant to this Schedule B. Such notice shall be by registered mail to the specific attention of: Canadian Pacific Railway Company, Att. Director of Risk Management, 7550 Ogden Dale Road SE, Calgary AB, T2Z 3L2. Alternatively, such notice can be sent by email to cpkc@ebix.com.

1.4 **Certificate of Insurance**

All policies of insurance stipulated in this Schedule B will be with insurers with a minimum A.M. Best Rating of "A- VII" and in a form satisfactory to CPKC, and MNBR will see that a copy of all certificates of insurance are delivered to CPKC prior to the date that MNBR commences operations and prior to any insurance renewal thereof. CPKC shall have no obligation to examine such certificate(s) or to advise MNBR in the event its insurances are not in compliance herewith. Acceptance of such

certificate(s) which are not compliant with the stipulated coverages shall in no way whatsoever imply that CPKC has waived its insurance requirements.

1.5 **No Limitation**

Neither compliance with the requirements of this Schedule B nor CPKC's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of MNBR to provide specific insurance coverage as required by Section 1.1 of this Schedule A. The insurance coverage acquired by MNBR pursuant to this Schedule B shall not in any manner restrict or limit the liabilities assumed by MNBR under this Agreement.

SCHEDULE "C"
Rate Escalation

{{ [REDACTED] }}

{{ [REDACTED] }}

{{ [REDACTED] }}

{{ [REDACTED] }}

{{ [REDACTED] }}

SCHEDULE "D"
Existing Customers

- Clearspan Components MP 0.2
- Mid South Lumber MP 0.3
- CP Warehouse MP 1.3
- Mississippi Railcar MP 15.4
- QLS Warehouse MP 1.6
- Jachin Lumber MP 36.4
- Pennco Warehouse MP 42.7
- Marco Warehouse MP 43.2
- Georgia Pacific Naheola MP 45.9
- Geo Specialty Chemical MP 46.0
- Harmon & Associates MP 42.9

SCHEDULE "E"
MNBR Timetable

Meridian & Bigbee Rail

Meridian Subdivision Map

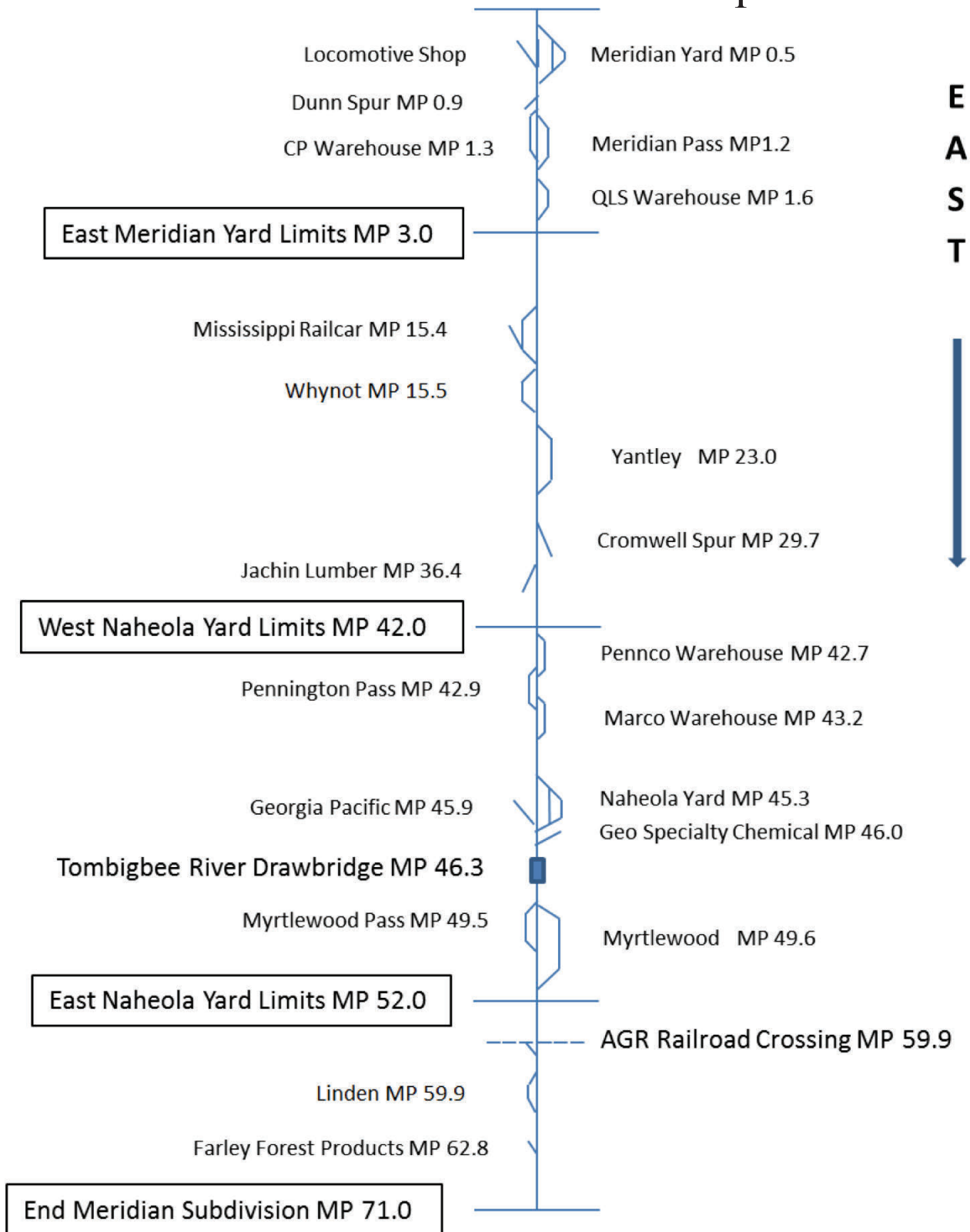


EXHIBIT 4

ENVIRONMENTAL INFORMATION

Exhibit 4 – Environmental Information

CPKC has been in contact with the Office of Environmental Analysis (“OEA”) to request a meeting with the OEA to discuss the preparation of an environmental report and, if necessary, the preparation of a historic report and an environmental assessment. OEA requested that this meeting occur after CPKC filed this Application. CPKC is including information pursuant to 1180.6(a)(8) and part 49 CFR part 1105.

(e) Content. The Environmental Report shall include all of the information specified in this paragraph, except to the extent that applicant explains why any portion(s) are inapplicable. If an historic report is required under § 1105.8, the Environmental Report should also include the Historic Report required by that section.

(1) Proposed action and alternatives. *Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.*

The Proposed Transaction

CPKC proposes to acquire from MNBR approximately 50.4 miles of single track railroad right of way and related facilities between Meridian, MS and Myrtlewood, AL (the “Western Line”). The Western Line is a low density, mostly rural rail line. MNBR, a Class III carrier, currently operates on the Western Line providing local and overhead rail service. MNBR operates east of Myrtlewood to Montgomery, AL (the “Eastern Line”) pursuant to a combination of lease and operating rights. CPKC’s proposed acquisition of the Western Line is contingent on CSXT retaking possession of the Eastern Line so that CPKC and CSXT can establish a new, direct efficient interchange at Myrtlewood. CSXT is filing a separate application with respect to the Eastern Line.

The Proposed Transaction and CSXT’s transaction will enable CPKC and CSXT to establish a premium train service linking their respective markets. The route over Myrtlewood is

more than one hundred miles shorter than existing CPKC-CSXT routes and, in many cases, avoids the need to use an intermediate carrier, and avoids routings through areas such as New Orleans that are often congested and particularly susceptible to seasonal disruptions. The new routing over Myrtlewood would give existing CPKC and CSXT shippers a new CPKC-CSXT direct option that will provide more efficient, consistent, faster and reliable service than current options. It would also enable CPKC and CSXT to compete effectively for new traffic, particularly for intermodal and automotive traffic.

The Western Line includes rail yards at Meridian, Naheola and Myrtlewood. Meridian Yard includes a locomotive shop and repair tracks. Naheola Yard includes yard offices and crew facilities.

At Myrtlewood Yard, to ensure fluid interchange of traffic between MNBR, AGR and CSXT, capacity will likely be added to support interchange activity between CSXT, MNBR and AGR and keep the other yard track and mainline free for CPKC-CSXT traffic.

Today, MNBR serves 11 local customers on the Western Line. About three quarters of the traffic that moves on the Western Line is forest products. The remainder primarily consists of a mix of cars moving to/from shop and non-TIH/PIH chemicals. Following consummation of the Proposed Transaction, MNBR will continue to operate on the Western Line pursuant to retained trackage rights. Thus, MNBR will continue to provide local and overhead rail service on the Western Line much as it does today, except it will no longer act as an intermediate bridge carrier for CPKC-CSXT traffic and will provide service on an improved track.

Following consummation of the Proposed Transaction, CPKC anticipates operating one train in each direction daily on the Western Line. The CPKC trains will handle overhead traffic only and will not provide local service. CPKC and CSXT will interchange directly at

Myrtlewood, utilizing run-through power and an existing yard trackage at Myrtlewood. CPKC expects that its trains will handle primarily forest products, automotive and intermodal traffic.

Yard activity at Meridian should decrease as a result of the Transaction. At Meridian, CPKC and MNBR currently interchange CPKC-CSXT traffic that MNBR handles for CPKC in haulage. Following consummation of the Proposed Transaction, CPKC will interchange this traffic directly with CSXT at Myrtlewood and will not interchange it in Meridian.

As noted above, CPKC estimates that it will operate one train in each direction daily. Table 1 presents the base year (2022) volumes of traffic, the estimated volumes that CPKC expects to handle by 2029, year 5 of the Transaction, the estimated volumes in 2029 if the Transaction does not occur, and the Transaction-related growth (Year 5 - No Action = Transaction-Related Growth).

Table 1 – Western Line Estimated Volume Increases – Transaction v. No Action

Segment	2022 (Base Year)		2029 (Year 5 of Transaction)		2029 (No Action)		Transaction-Related Growth	
	Carloads	GTM's	Carloads	GTM's	Carloads	GTM's	Carloads	GTM's
Meridian - Whynot	5,048	7,651,745	31,299	64,487,885	7,019	11,146,722	24,280	53,341,163
Whynot - Pennington	4,415	13,651,730	30,666	117,359,233	6,386	17,146,707	24,280	100,212,526
Pennington - Naheola	4,986	1,376,562	31,237	10,603,208	6,957	4,871,539	24,280	5,731,669
Naheola - Myrtlewood	4,910	2,381,687	31,161	18,620,584	6,881	5,876,664	24,280	12,743,920
		25,061,724		211,070,910		39,041,632		172,029,278

Maintenance and Disposition

Currently, MNBR maintains the Western Line. Although its timetables indicate that certain track segments support a maximum speed of 25 MPH, current track conditions support a sustained maximum speed of 10 MPH. Due to the condition of the track, there is a risk of sun

kinks when day time temperatures exceed 95 degrees. Accordingly, on high heat days, MNBR operates at night.

Upon consummation, CPKC will assume responsibility for maintaining the Western Line and maintain it to a Class I carrier's operating standard. Initially, CPKC intends to upgrade the condition of the track to remove slow orders and reduce the risk of sun kinks so that the line can be operated consistent with CPKC network standards, and support sustained 25 MPH operations. CPKC may, in the future, upgrade the track to FRA Class 3 standards to support 40 MPH operations. These changes to the track would be made within the existing right-of-way.

Several of the 31 bridges on the Line are 85-100 years old and will require substantial investment over the course of the next two decades. Upon consummation, CPKC intends to embark on a comprehensive, multi-year bridge maintenance, rehabilitation program and repair. This work would be required regardless of who owns the Western Line and therefore is not Transaction-related.

Reasonable Alternatives

The goal of the Transaction is to establish a Class I direct to Class I rail corridor that is more efficient than existing options and can effectively compete for traffic moving between the Southeastern United States on the one hand, and Mexico and the Southwestern United States on the other hand. There are no reasonable alternatives. CPKC has not been able to identify a reasonable alternative that would enable CPKC-CSXT to establish an east-west direct freight rail corridor between these markets.

(2) Transportation system. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

CPKC anticipates that the Proposed Transaction will not result in any traffic being diverted to other transportation systems or modes. Rather, CPKC believes that the Proposed Transaction will enable it to compete for traffic that currently moves by motor carrier, attracting highway traffic to rail. This could ease congestion on regional and local highways. Likewise, CPKC expects some traffic to shift from other rail carriers and from short sea carriers to the efficient premium CPKC-CSXT train service over Myrtlewood. Wahba V.S. at 8-9.

(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.

CPKC does not anticipate constructing any new rail facilities, or abandoning existing facilities. Accordingly, this section is not applicable.

(4) Energy.

(i) Describe the effect of the proposed action on transportation of energy resources.

CPKC does not expect to transport a material amount of energy resources over Myrtlewood as a result of the Proposed Transaction. Accordingly, CPKC anticipates that the Proposed Transaction will have little or no effect on the transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities.

CPKC does not expect to transport a material amount of recyclable commodities over Myrtlewood. Accordingly, CPKC anticipates that the Proposed Transaction will have little or no effect on the transportation of recyclable commodities.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

The Proposed Transaction will result in an increase in overall energy efficiency. For a significant amount of existing CPKC – CSXT traffic that is interchanged in New Orleans, Brookwood, or East St. Louis, a Myrtlewood direct routing is significantly shorter in distance. The shorter mileage will result in reduction in fuel consumption. Additionally, CPKC estimates that some traffic will shift from truck to rail resulting in reduced fuel consumption and reduced highway congestion.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year; or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(e)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.

The Proposed Transaction is not expected to cause any diversions from rail to motor carriage. Accordingly, this section is not applicable.

(5) Air.

(i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or

(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

CPKC expects that by 2029 it will be operating two trains daily on the Western Line, well below the 8 train threshold. These trains will operate in run through service between

Meridian and Myrtlewood. However, because the Western Line is currently a low density rail line, the addition of just two trains daily will result in an increase in GTM's that is in excess of the 100 percent annual GTMs threshold. See Table 1 in Section (e)(1) above. The Proposed Transaction will not result in an increase of yard activity that is above the 100 percent threshold. In fact, CPKC expects that yard activity in Meridian will actually decrease as a result of the Proposed Transaction, as CPKC and MNBR will no longer interchange haulage traffic in Meridian. CPKC expects that the impact of the Proposed Transaction on Naheola and Myrtlewood yards to be neutral. MNBR will continue to operate Naheola Yard as it does today. The CPKC-CSXT interchange at Myrtlewood will utilize run-through power and any spotting and pulling of MNBR and AGR interchange traffic by CSXT will involve pre-blocked cars thereby minimizing yard activity and dwell. Traffic that will be interchanged between CSXT, MNBR, and AGR at Myrtlewood is the same traffic that MNBR and AGR interchange at Myrtlewood today. The key difference is that some of the AGR traffic that currently is interchanged with MNBR and is handled by MNBR on the line east of Myrtlewood, will instead be interchanged with CSXT. In any event, this change in interchange activity results from CSXT's transaction and not from the Proposed Transaction.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:

- (A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,*
- (B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or*
- (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.*

The Proposed Transaction does not affect a class I or nonattainment area under the Clean Air Act. Accordingly, this subsection is not applicable.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Transportation of ozone depleting materials is not contemplated. Accordingly, this subsection is not applicable.

(6) Noise. *If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:*

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

The Proposed Transaction is not expected to result in incremental increases of noise above the thresholds.

(7) Safety.

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

CPKC expects to invest in upgrading the track facilities to CPKC standards. The improved track conditions will increase safety.

CPKC expects minimal impact on local transportation systems due to blocked grade crossings. The Western Line runs through mostly rural areas with few highway grade crossings. The Transaction will not result in a significant increase in the number of trains operated on the Western Line. CPKC expects for at least the next several years to run one train in each direction on the Line and that the train will be approximately 70 cars which CPKC understands is similar

in length to the trains MNBR currently operates. Because CPKC will be handling traffic that MNBR handles on CPKC's behalf today, MNBR trains should be shorter in length as a result of the Transaction. Further, due to CPKC's investment in the track to support higher speeds, trains should clear some grade crossings more quickly than is possible today. In addition, CPKC's maintenance practices including vegetation control and brush cutting should increase visibility at grade crossings, improving safety.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

No new hazardous material traffic is expected to be transported over the Western Line as a result of the Proposed Transaction.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

CPKC is not aware of any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way.

(8) Biological resources.

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

CPKC expects to engage in these consultations after meeting with OEA, which OEA requested occur after this Application was filed. The Proposed Transaction is not expected to affect any wildlife sanctuaries, or refuges, National or State parks or forests.

(9) Water.

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

CPKC expects to engage in these consultations after meeting with OEA, which OEA requested occur after this Application was filed. The Proposed Transaction does not require permits under Section 402 of the Clean Water Act.

(10) Proposed Mitigation. *Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.*

CPKC is not aware of any adverse environmental impacts which would require mitigation. CPKC expects to engage with OEA after this Application is filed and will address concerns raised by OEA, if any, as appropriate.

EXHIBIT 15

OPERATING PLAN – MINOR

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

VERIFIED STATEMENT OF RAYMOND A. ELPHICK

My name is Raymond A. Elphick. I am the Vice President Service Design and Capacity Management for Canadian Pacific Kansas City (“CPKC”). My business address is Building 1, 7550 Ogden Dale Road, Calgary, AB, Canada, T2C 4X9. I have been employed by CPKC or its predecessor Canadian Pacific (“CP”) since April of 1992. My rail experience began in 1989 when I was hired by Canadian National Railway as a brakeman/trainman in Toronto, Ontario. In 1992, I was hired by CP in Engineering Services. I held several different planning roles in Engineering. I was promoted to Service Design in 2005, where I have now spent 18 years in various roles with increasing accountability. I am responsible for, among other things, the service design, network capacity capital, real estate, industrial development, resource planning, and operations metrics at CPKC. One of my key responsibilities at CPKC is reviewing new business opportunities with CPKC’s commercial team and designing transportation services that meet the needs of those

customers consistent with CPKC’s network and operating capabilities. In doing so, I am deeply engaged in the products CPKC offers and the strategic requirements to build a network with both the capacity to deliver those products efficiently and with the service and competitive capability our customers require.

I am also familiar with how Meridian & Bigbee Railroad, L.L.C. (“MNBR”) operates today based on information provided by MNBR. My team and I have worked with MNBR and with CSXT in developing an operating plan that ensures efficient and safe operations of all parties operating on the approximate 50.4± route miles of rail line between Meridian, Mississippi and Myrtlewood, Alabama (the “Western Line”) after the Proposed Transaction has been consummated.

The purpose of my statement is to present the Operating Plan required by 49 CFR § 1180.8(c). Accordingly, Section I describes our understanding of the current operations on the line between Meridian and Myrtlewood. Section II describes our operating plan for MNBR and CPKC following consummation of the Proposed Transaction and identifies significant changes in operations. Section III describes the investments that CPKC plans on making in order to support efficient and safe Class I operations. Section IV describes the operating economies that will be achieved by the Proposed Transaction. Sections V, VI, and VII address, respectively, the passenger traffic on the line, anticipated abandonments and discontinuances, and the impact on labor.

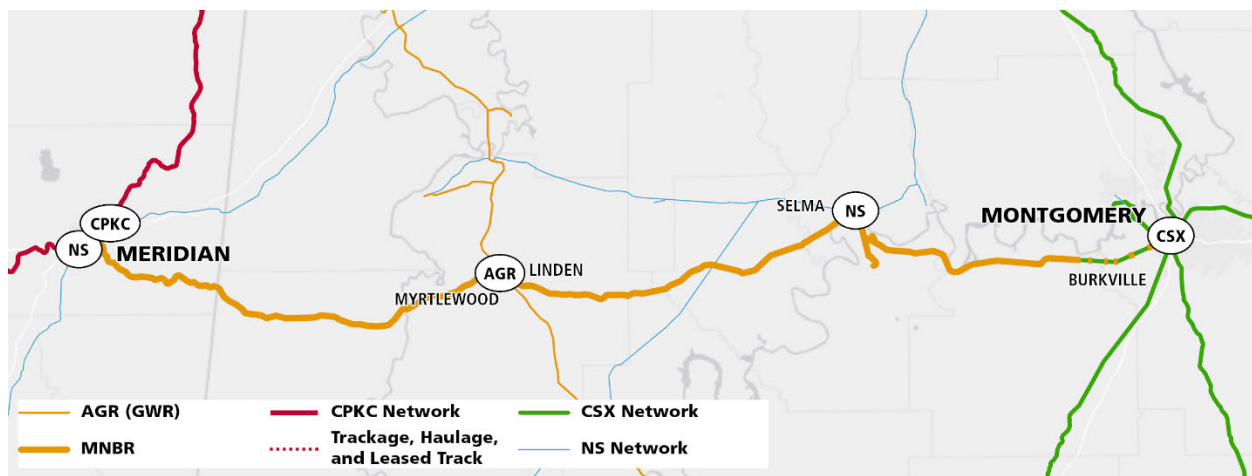
I. Current (pre transaction) Operations

Today, MNBR is the sole operator on the Western Line. MNBR leases and operates east of Myrtlewood to Burkville, Alabama and has incidental overhead trackage rights to Montgomery, Alabama (the “Eastern Line”). Below I describe MNBR’s current interchanges, yards, terminal, and its traffic based on 2022 data.

A. MNBR Interchanges

At Meridian, MNBR interchanges with Norfolk Southern ("NS") and CPKC. East of Myrtlewood on the Eastern Line, MNBR's operations extend to Montgomery where it interchanges with CSXT. MNBR also interchanges on the Eastern Line with Alabama & Gulf Coast Railway LLC ("AGR") at Linden and with NS at Selma.

Figure 1
MNBR System Map with Interchanges



B. Yards and Terminals

MNBR has three yards on the Western Line: Meridian Yard, Naheola Yard, and Myrtlewood Yard. See Figure 2.

Meridian Yard consists of three yard tracks that can hold approximately 20 cars each. There are also three locomotive shop tracks and a car repair track.

Naheola Yard consists of six yard tracks that can each hold between approximately 34 and 44 cars. MNBR primarily uses this Yard as a serving yard for Georgia Pacific.

Myrtlewood Yard consists of two tracks: an 8,200' track capable of holding approximately 120 cars and a 3,700' track capable of holding approximately 60 cars.

C. Traffic

MNBR has informed us that the total freight traffic on the Western Line in 2022 was {{ [REDACTED] }} cars consisting of local and overhead, including haulage, traffic.

Local Traffic

MNBR serves eleven local customers on the Western Line. Most of the customers are located near either end of the Western Line. See Figure 2.

Figure 2
MNBR Yards and Customers – Western Line



A significant amount of the Meridian customers' traffic is interchanged with CPKC or NS in Meridian. Likewise, a significant amount of the Naheola-Pennington customers' traffic, which includes the largest customer on the Western Line, {{ [REDACTED] }}, is interchanged with AGR at Myrtlewood or east of Myrtlewood with NS at Selma, or CSXT at Montgomery. Traffic volumes on the MNBR in 2022 by track segment are shown below in Table 1.

Table 1
MNBR 2022 Volumes by Track Segment

Segment	Carloads	Estimated GTMs
Meridian - Whynot	5,048	7,651,745
Whynot - Pennington	4,415	13,651,730
Pennington - Naheola	4,986	1,376,562
Naheola – Myrtlewood	4,910	2,381,687

		25,061,724
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Overhead Traffic

MNBR also handles overhead traffic on this line segment that includes traffic moving from AGR to CPKC or NS. MNBR interchanges with CPKC and NS at Meridian 5 days-a-week, but only provides eastbound overhead service to and from Montgomery 3 days-a-week.

In July 2022, The Kansas City Southern Railway Company (“KCS”) and MNBR entered into a haulage arrangement for MNBR to move traffic in KCS’s account from Meridian for interchange with CSXT at Montgomery. Between August and December 2022, haulage traffic averaged approximately {{[REDACTED]}} loaded cars a month.

Traffic Type

Nearly three quarters of the traffic that currently moves on the Western Line is forest products moving in boxcars. Haulage traffic and the {{[REDACTED]}} account for most of the forest product traffic. The remainder of the traffic consists largely of non-PIH chemical traffic and cars moving on their own wheels to and from the Mississippi Railcar car repair facility on the line near Meridian.

D. Operations

Operating control on the Western Line is pursuant to Track Warrants and Yard Limits. Although the maximum authorized speed on the Western Line is 25 MPH, the maximum sustainable operating speed is approximately 10 MPH. This is due to track conditions, permanent speed restrictions, including 16 miles which are subject to a permanent 10 MPH speed restriction, and the Tombigbee River Bridge at MP 46.3 which is subject to a permanent 5 MPH speed restriction.

The current conditions of the MNBR track make the line susceptible to buckling during periods of high daytime heat. To minimize the risk of derailment, when the temperature is above 95 degrees, MNBR operates only at night. According to MNBR, on average, the heat risk affects approximately 60 train starts annually.

By design, MNBR operates six days-a-week between Meridian and Naheola. On alternate days, MNBR operates L128 eastbound and L129 westbound. L128 services all local customers in the Meridian Yard, switches interchange traffic between Meridian Yard and the CPKC and NS interchange tracks, builds the eastbound train and serves local customers on the Western Line before going off duty at Naheola. L129 services three customers (QLS Warehouse, Marco Warehouse and Pennco Warehouse) as needed on the westbound move to Meridian and switches local customers at Meridian before delivering interchange traffic to KCS and NS.

MNBR operates a daily yard assignment, Y101, at Naheola. Y101 switches AGR traffic, MNBR's trains that operate east of Myrtlewood (L125 and L126), and the Georgia Pacific plant at Naheola. Also, Y101 builds the L129 westbound to Meridian and the L125 eastbound to Montgomery.

Table 2
MNBR's Planned Train Operations

Train ID	Route	Average Train Size	On Duty (except when temperature is above 95 degrees)	Days of Service
L128	Meridian to Naheola	65 Cars	10:00 AM @ Meridian	Sun – Tues – Thur
L129	Naheola to Meridian	65 Cars	10:00 AM @ Naheola	Mon – Wed – Fri
Y101	Naheola to Myrtlewood		8:00 AM @ Naheola	Daily

II. Post-Transaction Operations

A. MNBR Operations – Western Line

Following the consummation of the transaction, MNBR will continue to operate on the Western Line largely as it does today. It will continue to have exclusive rights to serve existing local customers, and it will continue to interchange traffic with NS and CPKC at Meridian five days-a-week. However, there will be three key changes to MNBR's operations post-closing.

First, because in a separate transaction CSXT will have terminated MNBR's lease and trackage rights east of Myrtlewood, on the Eastern Line, all MNBR traffic will interchange at the current Myrtlewood Yard which, as noted above, has two yard tracks, an 8,200' track and a 3,700' track capable of holding approximately 120 cars and approximately 60 cars, respectively. AGR will also interchange with CSXT at Myrtlewood. We anticipate that AGR and MNBR traffic will account for approximately {{[REDACTED]}} cars interchanged at Myrtlewood daily, five days-a-week. As discussed in Section III.C. below, CPKC will work with CSXT to expand capacity at Myrtlewood as needed.

Second, with a direct connection between CPKC and CSXT networks established at Myrtlewood, MNBR will no longer handle CPKC-CSXT traffic in haulage. Rather, CPKC will handle all CPKC-CSXT interline traffic and interchange that traffic directly and efficiently with CSXT, eliminating the intermediate carrier and the need for switching out power. Because MNBR will no longer be handling CPKC haulage traffic, the volume of cars interchanged with CPKC in Meridian will be reduced and MNBR's average train length should be shorter.

Third, CPKC will control and dispatch the line, extending its operational footprint east to Myrtlewood and ensuring fluidity by providing MNBR with designated operating windows between CPKC traffic. As CPKC anticipates operating one train a day in each direction, there will

be more than ample capacity for MNBR to operate on the line and serve its customers. CPKC and MNBR will coordinate and cooperate to ensure smooth, safe and efficient operations.

As to interchange at Myrtlewood, the parties contemplate that MNBR and AGR will spot and pull cars from Myrtlewood during a designated operating window. AGR will arrive first and spot cars for MNBR and for CSXT. MNBR will shuttle cars over from Naheola for AGR. AGR will pull cars from MNBR and CSXT, and depart eastbound. Next, MNBR will spot cars for CSXT and pull cars from AGR and CSXT, before departing westbound. MNBR, AGR, and CSXT will use the 3,700' yard track for all MNBR and AGR interchange traffic, keeping the mainline and the other yard track clear for CPKC-CSXT traffic.

CPKC will grant AGR trackage rights to Naheola Yard. These rights will give AGR the flexibility to interchange with MNBR at Naheola Yard instead of Myrtlewood if operating conditions warrant, *e.g.*, if for some reason, the designated Myrtlewood yard track is unable to accommodate the volume of the MNBR's and AGR's interchange traffic.

B. CPKC-CSXT Operations

Following consummation of the Proposed Transaction, CPKC expects to interchange one train pair (*i.e.*, a train in each direction) daily with CSXT. As Jonathan Wahba explains in his verified statement, CPKC estimates volumes would average approximately 70 cars per train within the first five years of operations. CPKC intends to grow the volumes served on this route, however, one train pair a day should have sufficient capacity to accommodate much of the growth in the first five to ten years. Eventually, CPKC hopes to add an additional regularly operated train pair, but the volumes to support a second train pair likely would not materialize for several years.

CPKC and CSXT will interchange traffic at Myrtlewood between 6:00 AM and 12:00 PM. For eastbound CPKC-CSXT traffic, CPKC crews will operate the CPKC-CSXT interline train

from Jackson, Mississippi to Myrtlewood, Alabama. If there is MNBR traffic on the train for interchange at Meridian, it will be pre-blocked at the head end of the train so that it can easily be set out at Meridian before the train continues on to Myrtlewood where the CPKC crew will yard the train on the 8,200' yard track and go off duty. Next, a CSXT crew will pull any traffic spotted by MNBR or AGR on the 3,700' yard track the night before, perform regulatory inspections, and then operate the train east from Myrtlewood utilizing run-through power.

For westbound CPKC-CSXT traffic, CSXT crews will operate the train to Myrtlewood, with any traffic for MNBR and AGR pre-blocked. At Myrtlewood, the CSXT crew will spot the MNBR and AGR blocks on the 3,700' yard track and secure the CPKC-CSXT train on the 8,200' yard track, or if that track is occupied, on the mainline. A rested, Meridian-based CPKC crew will perform regulatory inspections before operating the train westbound from Myrtlewood. At Meridian, the CPKC crew may stop briefly to lift manifest traffic, including traffic interchanged with MNBR, and then continue on to Jackson, Mississippi.

III. CPKC Anticipated Investment in the Western Line

CPKC intends to invest in the Western Line to bring it up to Class I standards and to support higher operating speeds, double stack intermodal, and longer and heavier trains. CPKC anticipates that this investment will include track and bridge improvements. In 2024, CPKC estimates that it will spend approximately \$46 million as follows:

A. Track

The Western Line is a combination of FRA Class 1 and Class 2 track. However, as noted above, due to track conditions much of the Class 2 track is subject to slow orders due to deferred maintenance. So while the maximum authorized speed on the Western Line is 25 MPH, MNBR is generally limited to 10 MPH operations. CPKC expects to invest in track that, in the near term will

increase maximum track speed to 25 MPH on the majority of the Western Line and eventually, CPKC expects to increase the speed limit to 40 mph, and then to 60 MPH, if economic considerations warrant.

Track work is expected to include rail and tie replacement, joint elimination, switch replacements, crossing rehabilitation, anchor replacement, ballast replacement, brush cutting, and shoulder cleaning, and the installation of wayside detectors and safety devices.. Among other things, the improved track conditions will mitigate the risk of buckling, bringing the Western Line's reliability in high heat to a standard that is consistent with the rest of CPKC's network operations.

B. Bridges

There are 31 bridges on the Western Line, 24 of which are 85 to 100 years old and are nearing the end of their lifespan. CPKC expects to invest approximately \$9 million in bridge rehabilitation work in the first 5 years to support speeds up to 25 MPH. Long term, CPKC may need either to perform substantial rehabilitation work on, or replace, all but one of the bridges in order to support higher speeds at an estimated cost of more than \$100 million.

C. Extended Yard Track

To ensure efficient interchange at Myrtlewood, CPKC and CSXT intend to work together to expand capacity as necessary in order to ensure adequate capacity for MNBR and AGR interchange traffic while leaving the mainline and 8,200' yard track free for the efficient CPKC-CSXT hand-off.

IV. Operating Economies for Rerouted CPKC – CSXT Traffic and New Traffic.

Direct interchange between CPKC and CSXT at Myrtlewood utilizing run through power on tracks maintained to support 25 MPH or greater speeds introduces significant operating

economies as compared to the way CPKC-CSXT traffic moves today. Increased speeds, improved service levels and reduced dwell time means faster transit times, which in turn, means that equipment is turned more quickly. Increased asset utilization reduces equipment costs for railroads and for shippers. The direct interchange also results in increased crew utilization by eliminating the need for a new crew to handle the train from Meridian to a CSXT interchange location, further reducing costs.

Operating with run-through power eliminates the need to switch power at Meridian and at Myrtlewood. It allows for step-off, step-on operations by CPKC and CSXT crews.

Additionally, the investment in upgrading infrastructure supports operating longer trains on the line, which yields economies of scale.

The Proposed Transaction will establish a shorter, more direct route for a significant amount of existing traffic, reducing operating costs and fuel consumption. Currently, CPKC - CSXT non-automotive interline traffic between CPKC-served markets in Mexico and the Southwestern United States moves over Shreveport and is interchanged with CSXT at New Orleans, Brookwood, or East St. Louis. The route over Myrtlewood between Shreveport and Atlanta, for example, is 158 miles shorter than over New Orleans and 104 miles shorter than over Brookwood. For traffic moving between Shreveport and Louisville, for example, the route is 255 miles shorter than over East St. Louis.

As to automotive traffic, much of that traffic utilizes an intermediate carrier between Laredo and New Orleans, Memphis and East St. Louis. Establishing an efficient direct CPKC – CSXT interchange at Myrtlewood will give shippers an option that avoids the need to use an intermediate carrier, thereby reducing the number of handlings and opportunities for dwell.

In addition to being shorter than the route over New Orleans, the route over Myrtlewood has other advantages over a New Orleans routing. That route is often congested and, due to the tangled web of rail lines and operating rights, can be difficult to traverse. In New Orleans, CPKC and CSXT interchange via the New Orleans Public Belt Railroad. By contrast, the route over the Meridian Speedway to Myrtlewood is simpler, more direct, less congested and less susceptible to service disruptions due to seasonal weather events. These factors support higher velocities than the route over New Orleans. The result is faster, more reliable and predictable service for customers, a reduction in operating costs for the rail carriers and in equipment costs for customers, and a reduction in fuel consumption and emissions which benefits the environment.

V. Passenger/Commuter Traffic

No commuter or passenger service moves on the Western Line.

VI. Anticipated Discontinuances and Abandonments

CPKC does not anticipate seeking any discontinuances or abandonments in relation to this Proposed Transaction. CSXT has agreed to file to discontinue its never-used trackage rights authority to move overhead traffic to Meridian on the Western Line.¹

In conjunction with CSXT's taking back possession of the line east of Myrtlewood, CPKC anticipates that MNBR will seek to discontinue its overhead trackage rights on CSXT between Burkville and Montgomery. When that transaction is consummated, MNBR will no longer be able to operate between Myrtlewood and Burkville, and accordingly, will no longer need or be able to utilize those trackage rights.

¹ The trackage rights authority was granted in 1996. See *CSX Transp., Inc.—Trackage Rights Exemption—Meridian & Bigbee R.R. Co.*, FD 32962 (STB served June 6, 1996).

VII. Labor Plans

CPKC anticipates that, as a result of the Proposed Transaction, we will hire 12 new full time employees in 2024 as follows:

Position	Quantity
Track Inspector	1
Foreman	1
Machine Operator	1
Trackman	1
T&E (Meridian-based)	8

No CPKC employee will be adversely affected by the Proposed Transaction.

VIII. Conclusion

The service design options made possible by the Proposed Transaction will result in better asset utilization for all parties, while investment in the line will ensure faster, more reliable service. By integrating the MNBR operations into CPKC dispatch and control between Meridian and Myrtlewood, we will extend the benefits of our proven operating model while protecting local service and shortline interchange. Most critically, the revitalized line will include a direct interchange between CPKC and CSXT, resulting in new, more competitive east-west routing options for shippers across the Southeastern United States, the Southwestern United States and Mexico.

VERIFICATION

I, Raymond A. Elphick, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed on this 6th day of October, 2023.



Raymond A. Elphick

APPENDIX 1
OPINION OF COUNSEL

As counsel for Canadian Pacific Kansas City Limited (“CPKCL”), on behalf of itself and its wholly owned subsidiary, The Kansas City Southern Railway Company (“KCS”), applicants herein, I have reviewed the foregoing Application and am generally familiar with the transaction proposed therein. It is my opinion that the proposed transaction meets the requirements of the law, is within the corporate powers of CPKCL and KCS, and will be legally authorized and valid if approved by the Surface Transportation Board.



Stephen Quinlivan

APPENDIX 2

VERIFIED STATEMENT OF JAMES D. CLEMENTS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C. IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

VERIFIED STATEMENT OF JAMES CLEMENTS

My name is James D. Clements. I am the Executive Vice-President of Strategic Planning & Technology for Canadian Pacific Kansas City (“CPKC”). My office is in Calgary, Alberta. I have been employed by CPKC or its predecessor Canadian Pacific (“CP”) since 1994 and have occupied my present position since 2023. Immediately prior to this position, I was the Senior Vice President Strategic Planning & Technology Transformation for CP (2019 to 2023) and before that I served as Vice-President of Strategic Planning and Transportation Services for CP (2014 to 2019). During my employment with CP, I have served in a variety of planning, operating, commercial, and administrative roles, including Financial Analyst, Director – US Grain Marketing and Sales, Director – Mines, Metals and Aggregates and General Manager – Car Management. In these roles, I have been closely involved in several prior rail transactions in the United States,

including CP's acquisition of the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E")¹, the subsequent sale of the west end of the DM&E to Rapid City, Pierre & Eastern Railroad, Inc.², the sale of the south end of the Delaware and Hudson Railway Company, Inc. to Norfolk Southern ("NS"),³ the acquisition of the Central Maine & Quebec Railway US Inc., and most recently the acquisition of The Kansas City Southern ("KCS").⁴ As a result, I am familiar with CPKC operations in the United States, and am familiar with the United States rail industry generally. I have also been closely involved in CPKC's proposed acquisition from Meridian & Bigbee Railroad, L.L.C.'s ("MNBR") of the portion of its rail line between Meridian, Mississippi and Myrtlewood, Alabama (the "Western Line") (the "Proposed Transaction"). The Western Line is shown in the map accompanying the Minor Application (Exhibit 1), which is reproduced as Figure 1 below.

The purpose of my verified statement is to provide an overview of the Proposed Transaction and how it will impact local operations; describe the many public benefits of establishing a direct interchange with CSXT at Myrtlewood that will benefit shippers, competition, safety, and the environment; explain why the Proposed Transaction and CSXT's complementary transaction to repossess the Eastern Line are essential to establishing such a direct interchange; and to explain why the Proposed Transaction will not harm competition, only strengthen it.

¹ FD 35081.

² FD 35799.

³ FD 35873.

⁴ FD 36500

A. The Proposed Transaction

1. Overview

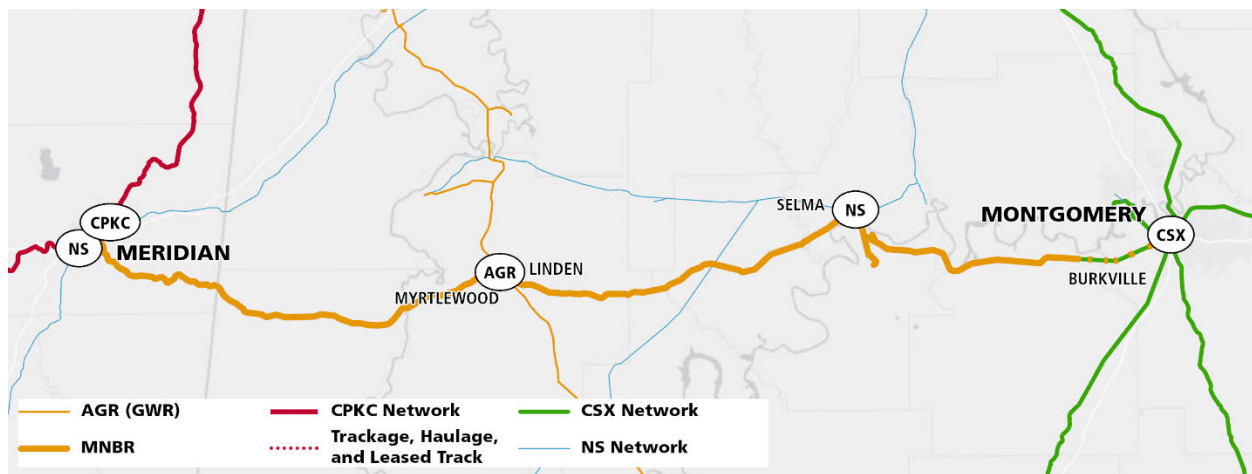
CPKC proposes to acquire from MNBR its rail line between Meridian and Myrtlewood in order to create a new Class I freight rail corridor that provides a shorter and more efficient CPKC-CSXT direct interline service route between CPKC-served markets in the Southwest United States and Mexico and CSXT-served markets in the Southeast United States. CPKC seeks to establish a premium train service with a direct, efficient interchange with CSXT over Myrtlewood that will provide a new, highly attractive option to intermodal, automotive and other shippers.

Under the Proposed Transaction, MNBR would retain perpetual trackage rights to provide exclusive service to existing local customers and to handle Alabama and Gulf Coast Railway (“AGR”) overhead traffic. MNBR would also retain non-exclusive trackage rights to handle CSXT-NS overhead traffic and, if requested by CPKC, to serve new local customers. MNBR would not have rights to handle CPKC-CSXT interline traffic unless requested by CPKC. MNBR would also retain the use of the Meridian Yard, including the locomotive shop, six tracks at Naheola Yard together with yard offices and crew facilities and select other sidings, to support its rail service. In exchange for ownership of the Western Line, Genesee & Wyoming, Inc. (“G&W”), MNBR’s parent, would receive rights in respect to two CPKC Canadian rail properties and other consideration.

Contemporaneous with CPKC’s acquisition of the Western Line, CSXT would consummate a complementary transaction in which it would repossess and resume operating on the line between Myrtlewood and Montgomery (the “Eastern Line”). Currently, MNBR leases from CSXT and operates the rail line from Myrtlewood to Burkville, Alabama and has incidental trackage rights from Burkville to Montgomery, Alabama. See Figure 1 below. CPKC’s Proposed

Transaction is contingent on CSXT consummating its transaction. Both CSXT and CPKC intend to make substantial investments in their respective lines to upgrade to Class I standards. Those investments, which are essential to support premium CPKC-CSXT train service, would not be possible without CPKC acquiring ownership of the Western Line and CSXT repossessing the Eastern Line.

Figure 1- MNBR's System Map



2. MNBR Will Retain Trackage Rights to Continue to Serve Local and Overhead Traffic

Under the Proposed Transaction, MNBR will retain perpetual exclusive trackage rights over the Western Line to provide local service along the line to existing customers. MNBR will also retain exclusive trackage rights to handle AGR overhead traffic (*i.e.*, traffic moving between AGR and connections with NS and CPKC at Meridian). MNBR's retention of the overhead trackage rights for AGR traffic will help support MNBR's local service over the line.

CPKC will preserve its options to serve new local customers on the Western Line as well as certain overhead traffic. Accordingly, under the Proposed Transaction, MNBR would retain

trackage rights to serve new local customers if requested by CPKC and will have non-exclusive rights to handle CSXT – NS overhead traffic.

This arrangement would benefit all stakeholders. It would allow CPKC to focus on its goal of providing fast and reliable premium train service while allowing MNBR to continue to focus on what short lines do best; namely, providing excellent local service. MNBR gets to continue to operate on the Western Line just as it does today, but on an improved, safer track and without the ongoing maintenance obligation to maintain the track and 31 bridges, most of which are nearing the end of their life span. Local shippers will continue to enjoy MNBR’s great service. Offline shippers will benefit from a new, efficient and environmentally friendly option between markets in Mexico and the Southwest United States and markets in the Southeast United States.

3. MNBR Will Retain Use of Ancillary Facilities Necessary to Provide Local and Overhead Rail Service

In order to provide local and overhead service, MNBR will retain use under a long-term lease of the Meridian Yard and Naheola Yard facilities. MNBR uses the Meridian Yard to serve local customers in Meridian, to interchange traffic with CPKC and with NS, and to build its eastbound train. There are also three locomotive shop tracks and other tracks including a car repair track in the yard of which MNBR will retain use. MNBR uses the Naheola Yard primarily as a serving yard for the adjacent Georgia Pacific plant. Following consummation of the Proposed Transaction, MNBR will continue to use these facilities as they do today.

4. CPKC Will Have the Residual Common Carrier Obligation

As owner of the Western Line, CPKC will have a residual common carrier obligation. This obligation will serve as a backstop in the event that the trackage rights are suspended, terminated

or the Board were to determine that MNBR is otherwise unable to satisfy its common carrier obligation.

5. Consideration

CPKC and MNBR's parent company, G&W, agreed that the value to MNBR of the property rights that CPKC would acquire is {{ [REDACTED] }}. As consideration, G&W would receive two CPKC operating properties in Canada, a 43-mile line on CPKC's Hoadley Subdivision, south of Edmonton, and property in the Scotford Area in the Alberta Industrial Heartland and other additional consideration. The Purchase Agreement provides for G&W to receive additional compensation in the event CPKC {{ [REDACTED] }} on the Western Line. No cash is involved in the Proposed Transaction, and accordingly, the Proposed Transaction does not involve any financing.

B. Effect of Transaction on Operations

1. Traffic and operation of Western Line today

The line between the CPKC system at Meridian and the CSX system at Montgomery, Alabama is a single track, low density line that is operated by MNBR, a Class III rail carrier. MNBR owns the line between Meridian and Myrtlewood, a distance of approximately 50.4 miles. Between Myrtlewood and Montgomery, Alabama, MNBR operates pursuant to a combination of a lease from CSXT and incidental overhead trackage rights over CSXT.

MNBR interchanges with CPKC, NS, AGR, and CSXT. It interchanges with NS and CPKC at Meridian, where it connects to NS's north-south line and to the CPKC-NS jointly owned Meridian Speedway. MNBR interchanges with AGR at Myrtlewood, with NS at Selma, Alabama, and with CSXT at Montgomery, Alabama.

Forest products accounted for nearly three quarters of the approximately { [REDACTED] } cars that moved in 2022 on some portion or all of the Western Line. Non-PIH Chemicals and cars moving to a repair shop accounting for much of the remainder.

Local traffic (traffic originating and/or terminating on the Western Line) accounted for {{ [REDACTED] }} of the total traffic. While there are eleven rail customers located on the Western Line, {{ [REDACTED] }} traffic enters and exits the Western Line at Myrtlewood. The next largest shipper on the Western Line, {{ [REDACTED] }} from Meridian. Most of its traffic enters and exits the Western Line at Meridian. Consequently, a significant portion of the local traffic is on the Western Line only for a short distance at either end of the Western Line.

Overhead traffic accounted for {{ [REDACTED] }} of the total traffic and included {{ [REDACTED] }} cars moving in haulage on CPKC's account under a haulage arrangement that KCS and MNBR entered into in July 2022.

2. Effect on Operations of Western Line

As described in greater detail in the Operating Plan, following consummation of the Proposed Transaction, MNBR will continue to operate largely as it operates today, except that its operations will now terminate at Myrtlewood and will be over improved trackage. At Myrtlewood, MNBR will interchange with CSXT and with AGR. MNBR will also need to share the Western Line with CPKC and will be subject to CPKC Operating Rules and dispatch control.

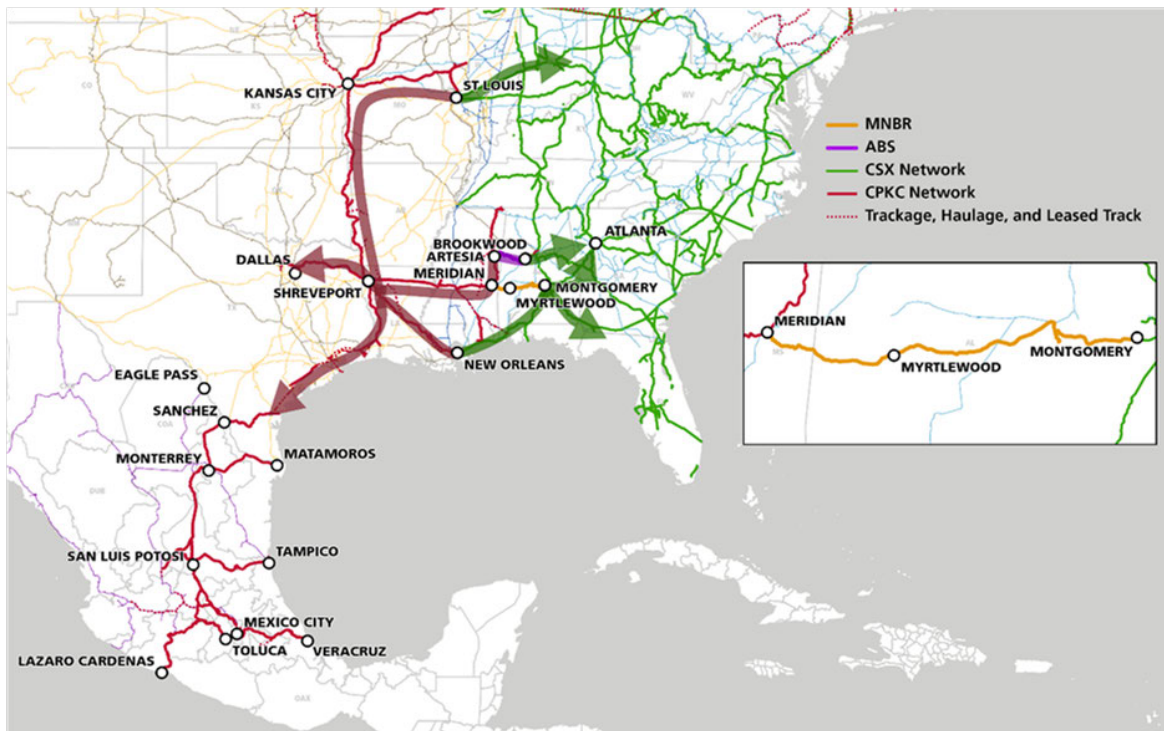
C. The Proposed Transaction Will Enable CPKC to Serve Existing Customers More Efficiently and Compete for New Customers

The Proposed Transaction produces several benefits which taken together will make a CPKC-CSXT direct Myrtlewood routing a formidable competitor for existing and future traffic moving between CPKC served locations in Mexico and the Southwest United States and CSXT served markets in the Southeast United States. These benefits include shorter routes, involving fewer carriers and handling events, increased safety, reduced fuel consumption, reduced costs, greater reliability and new market opportunities for shippers.

1. The Proposed Transaction Creates a Shorter Route Than the Existing CPKC-CSXT Routes

Today, most CPKC – CSXT non-automotive traffic moving between Mexico or the Southwest United States and the Southeast United States follows a circuitous route (see Figure 2 below). Eastbound traffic from Dallas and other points in the Southwest moves via Shreveport and moves south to a connection with CSXT at New Orleans before moving north again to Montgomery and Atlanta. CPKC-CSXT interchange traffic from Mexico follows an even more circuitous route as it must first move north to Shreveport before doubling back south to a connection with CSXT at New Orleans. At New Orleans, CPKC then hands the traffic to the New Orleans Public Belt Railroad (“NOPB”), and NOPB then takes the traffic to CSXT for interchange at CSXT’s Gentilly Yard. Most CPKC – CSXT westbound traffic follows the same route in reverse.

Figure 2 - CPKC / CSXT Manifest Traffic Flows Without MNBR Routing

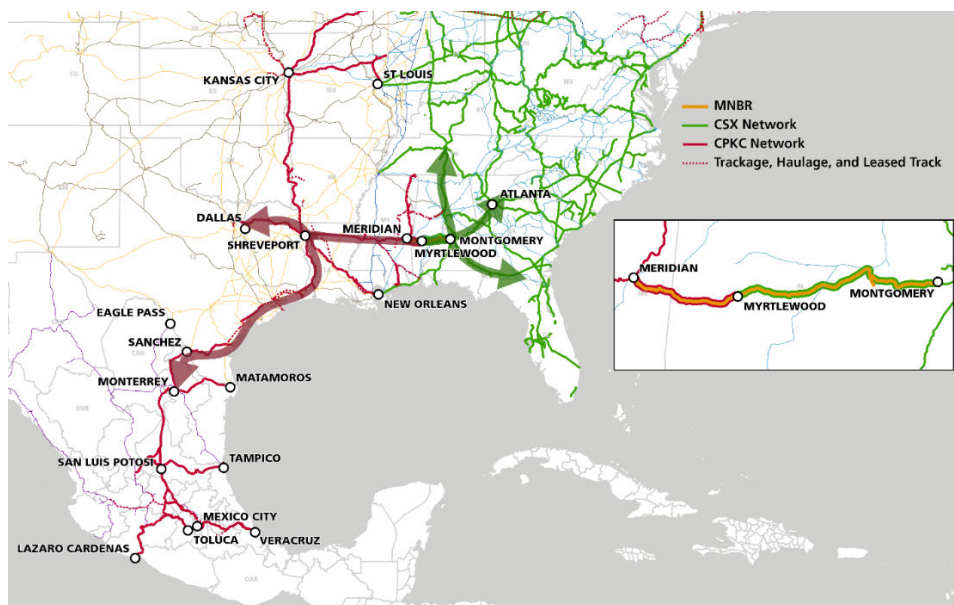


As shown in Figure 3 below, the Proposed Transaction would allow CPKC to route traffic more efficiently directly from Shreveport due east to interchange with CSXT at Myrtlewood. This routing will avoid the need to handoff to CSXT at New Orleans via an intermediate switch carrier, NOPB, which alone accounts for a 24 to 48-hour reduction in transit time. The Myrtlewood routing is approximately 158 miles shorter than the New Orleans routing.

A Myrtlewood interchange also enjoys significant advantages for CPKC – CSXT traffic that currently interchanges at East St. Louis, Missouri and at Brookwood, Alabama. Traffic moving between Mexico and the Louisville, Kentucky area, for example, moves north from Shreveport to Kansas City and then east to East St. Louis for interchange with CSXT. Under the Proposed Transaction, that traffic could be rerouted from Shreveport east to Montgomery and then north to Louisville – a 256-mile shorter route.

Traffic that originates or terminates between Shreveport and Meridian also can be interchanged today with CSXT at Brookwood, Alabama. CPKC handles that traffic north from Meridian to Artesia, Mississippi where it interchanges with the Alabama Southern Railroad, a short line that handles the traffic between Artesia and Brookwood. Under the Proposed Transaction, that traffic could be rerouted and interchanged directly to CSXT at Myrtlewood, a shorter route by 104 miles.

Figure 3 – CPKC / CSXT Manifest Traffic Flows Post Transaction



2. The Proposed Transaction Enables More Efficient CPKC-CSXT Routings for Traffic Not Currently Interchanged Directly Between Them

As discussed above, manifest traffic interchanged between CPKC and CSXT in New Orleans and in Brookwood must utilize intermediate carriers. As described in Jonathan Wahba's Verified Statement, cross border automotive traffic moving between points on CPKC's network in Mexico and CSXT's network in the Southeast also utilizes an intermediate carrier because of the circuitry and inferior service levels available via other routes. That traffic is typically

interchanged by CPKC to the bridge carrier at Laredo and delivered to CSXT at either New Orleans, Memphis or East St. Louis. Post-transaction this traffic could be interchanged directly and efficiently at Myrtlewood giving shippers a new, more efficient alternative routing option.

A CPKC to CSXT direct interchange will allow for a more efficient interchange of traffic and reduced dwell times. Trains interchanged between CPKC and CSXT at Myrtlewood will be able to operate with run through power. Thus, the delivering crew will spot the train on the interchange track and step off, and the receiving crew will step on and perform any required inspections and depart. This arrangement is second only to the efficiency of a single line move. The CSXT crew may have to spot or pull MNBR and AGR traffic, but the traffic will be pre-blocked which will minimize switching and dwell at Myrtlewood.

Further, an intermediate carrier might not give the traffic sufficient priority to support premium train service. A direct connection enables CPKC and CSXT to retain control throughout the entire move enabling CPKC and CSXT to deliver a reliable and consistent premium train service.

3. The Proposed Transaction Increases Safety

The Proposed Transaction benefits safety in two ways. In the first year of the transaction, CPKC intends to invest approximately \$46 million to upgrade the track and bridges to Class I standards. Higher track standards reduce the risk of derailments and other adverse events.

Also safety would be increased by a direct CPKC-CSXT connection. Reducing the number of carriers in a move reduces the number of operational events, *e.g.*, car handlings and power changes, which in turn increases safety.

4. The Proposed Transaction Benefits the Environment

CPKC anticipates that a new, more efficient CPKC – CSXT direct option will benefit the environment by attracting traffic from highway to rail. Highway to rail diversions would reduce both highway congestion and fuel consumption. Fuel consumption would also be reduced by rerouting a substantial amount of existing CPKC–CSXT traffic over the shorter Myrtlewood routing.

5. The Proposed Transaction Reduces Costs

Further, shorter routes and faster transit times increase equipment utilization, lowering costs. This benefits shippers that own or lease their cars. It also benefits the railroad by lowering operating costs.

6. The Proposed Transaction Increases Service Reliability

A direct interchange at Myrtlewood increases the reliability of CPKC-CSXT service by reducing the number of carriers and handling events, shortening the route, avoiding more congested areas and areas that are susceptible to seasonal weather disruptions such as New Orleans, and upgrading track infrastructure. All of these changes significantly reduce the risk of delay.

In addition, CPKC and CSXT are aligned on their plan to establish a premium train service and have agreed on an operating plan which maximizes the efficiency of the interchange. Under the operating plan, the carriers will coordinate closely on scheduling and utilize run through power, which will enable CPKC’s crew to step off the train and CSXT’s crew to step on, or vice-versa.

7. The Proposed Transaction Opens New Market Opportunities for Shippers

The establishment of a new direct, efficient Class I interchange at Myrtlewood, the planned infrastructure investment, and improved operations will elevate the Western Line from a slow, low density line to an improved link in a competitive east-west rail corridor connecting the southern United States. Shippers to the East and West will have a new route option with efficient service offerings and in many instances depending on O/D combinations reduced route miles putting new markets within reach. As offline shippers benefit from improved optionality, so too would local shippers. The increased line density and improved track conditions will enable MNBR to provide more efficient service to local customers which, in turn, incentivizes further investment on the Western Line.

D. Ownership is Essential to Unlocking the Route's Full Potential

Although CSXT and KCS have long recognized the clear potential of a direct route between Meridian and Montgomery, prior efforts to unlock that potential have fallen short. Efforts by these carriers to develop through traffic – including most recently, CPKC entering into a haulage arrangement over MNBR owned and operated lines – have not supported robust development of this service route.

After KCS and MNBR entered into a haulage arrangement in July 2022, some KCS (now CPKC)-CSXT traffic shifted from more circuitous routing over New Orleans. However, this traffic has generally been boxcar forest products moves that are not particularly time sensitive. Approximately {{[REDACTED]}} cars moved in haulage in the second half of 2022. CPKC expects this amount to, at a minimum, double in 2023, as the haulage arrangement will have been in place for the full year. While CPKC also expects that some additional existing traffic would eventually move

via haulage over Myrtlewood, for the majority of traffic, haulage offers insufficient advantages to warrant diversion.

Haulage requires interchange at Meridian between CPKC and MNBR. And while the parties currently interchange five days-a-week at Meridian, MNBR generally operates only three days-a-week to Montgomery. The high dwell times, increased handling, and the slow transit between Meridian and Montgomery, generally offsets any advantage afforded by the shorter routing on the haulage route.

In order to reroute existing traffic and attract new traffic via Myrtlewood, CPKC and CSXT must provide premium train service, *i.e.*, the train service must be fast, efficient, and reliable. To provide premium service requires eliminating handling events, upgrading the track to Class I railroad standards to support higher speeds, reducing yard dwell times, and reducing the number of carriers involved in the movement. Upgrading the track requires substantial investment.

The current condition of the Western Line is only sufficient for operating at sustained maximum speeds of 10 MPH. This level of service is not adequate for the competitive service that CPKC envisions which requires operations with at least maximum sustained speed of 25 MPH. Although there are track segments that are rated for 25 MPH maximum speeds, significant portions are subject to a 10 MPH maximum speed limit, and some bridges are subject to a 5 MPH maximum. Further, due to track conditions, slow orders are common and MNBR operates at night on high heat days to minimize the risk of derailment from track buckling.

CPKC plans include a track maintenance and replacement program for the Western Line to bring the Western Line initially up to FRA Class 2 standard in 2024, with the potential for additional investment in the future to bring the Western Line up to FRA Class 4. In 2024, we intend

to spend approximately \$46 million upgrading the track and bridges to support premium train service.

In addition to the year one improvements, CPKC plans to embark on a two-decade bridge repair, rehabilitation and replacement program. There are 31 bridges on the Western Line, 24 of which are between 85 and 100 years old. We estimate that we will spend at least \$9 million on bridge rehabilitation in the first 5 years to bring this aging infrastructure up to Class 2 standards, and several million more if we decide to upgrade the Western Line to FRA Class 4.

These investments should improve safety, reliability and service levels. But CPKC would not make these sizeable capital investments on a Western Line it does not own and control. In other words, to make this route competitive, CPKC ownership and control of the Western Line is essential.

E. CSXT's Retaking Possession of the Eastern Line (Between Myrtlewood and Montgomery) Is a Complementary Transaction

Likewise, CSXT's ownership and control of the Eastern Line is also essential. CPKC's Proposed Transaction builds upon, is enabled by, and is contingent on, CSXT's repossession of the leased line east of Myrtlewood and upgrading the line from Myrtlewood to Montgomery, Alabama. The ability to perform a Class I direct to Class I efficient interchange and to provide reliable, fast and efficient line haul service are key elements to the Proposed Transaction. CPKC can provide premium service only if CSXT is able to fulfill its commitment to take back ownership and control of the Eastern Line and to make the investments needed to support such service. It is CPKC's understanding that, like CPKC, if CSXT does not own and control the line, it would be unwilling to make the type of substantial investments needed to accomplish the goals of the Proposed Transaction.

Currently, the Eastern Line is operated by MNBR under a combination of lease of CSXT right of way, ownership of the physical trackage, and incidental overhead trackage rights. In a contemporaneously filed minor application, CSXT is seeking Board approval of a separate proposed transaction to take back possession of the leased right of way and reacquire ownership of the physical trackage between Myrtlewood and Burkville.

CPKC's ownership and control of the Western Line (along with CSXT's resumption of operations on the leased line east of Myrtlewood) and ability to interchange traffic directly with CSXT are the keys to unlocking the full potential of this new Class I route option to/from the Southeastern United States.

F. The Transaction is Pro-Competitive

The Proposed Transaction poses no risk of harm to competition. There will be no lessening of competition, creation of a monopoly or restraint of trade as a result of the Proposed Transaction. Rather, it is entirely pro- competitive. The Proposed Transaction would result in the addition of CPKC-CSXT direct service on an upgraded Western Line, but otherwise will not change the status quo. MNBR will continue to serve local rail customers, and MNBR would continue to handle overhead traffic with no restriction on interchange. Thus, MNBR would continue to be able to interchange directly with NS, CPKC, CSXT, and AGR. There would be no 2-1 shippers. Simply put, none of the existing options would go away.

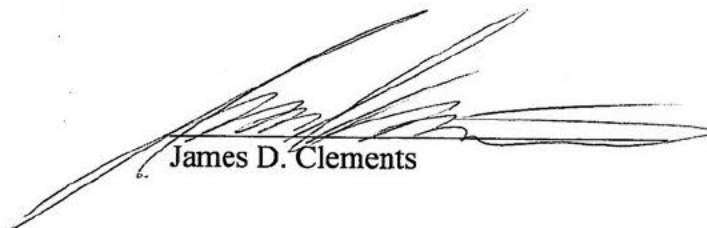
Further, this Proposed Transaction is end-to-end. CPKC's southern east-west main line runs from Dallas to Meridian. At Meridian, it turns due north (see Figure 1 above). Thus Meridian is effectively CPKC's eastern terminus on its east-west main line in the southeastern United States. CPKC has no parallel or duplicative lines that it operates in this area (the CPKC-owned rail line

between Artesia and Tuscaloosa is operated by the Alabama Southern Railroad under a long term lease).

As a direct result of the Proposed Transaction, CPKC and CSXT customers would now have the additional option of CPKC-CSXT direct interchange premium train service. By providing a shorter, more efficient routing option than CPKC-CSXT can offer today, the transaction enhances intermodal and intramodal competition for transportation services between the markets served by each carrier.

VERIFICATION

I, James D. Clements, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this 5th day of October, 2023.



James D. Clements

APPENDIX 3

VERIFIED STATEMENT OF JONATHAN WAHBA

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C. IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

VERIFIED STATEMENT OF JONATHAN WAHBA

My name is Jonathan Wahba. I was recently appointed as Canadian Pacific Kansas City's ("CPKC") Senior Vice President Sales & Marketing, Bulk & Intermodal. Between 2021 and 2023, I served as Vice President, Trade Integration for CPKC. Between 2017, when I joined CPKC's predecessor Canadian Pacific, and 2021, I served as Vice-President, Marketing and Sales, Intermodal Transportation and Automotive Products. Prior to joining CPKC, I served as Chief Operating Officer at Kriska Transportation Group. Prior to that, I worked for Canadian National Railway and Schneider National. In these roles, I have gained deep knowledge of the North American transportation sector and intermodal and automotive transportation in particular.

The purpose of my verified statement is to describe the benefits of the Proposed Transaction from a commercial perspective; explain why we expect certain existing traffic to switch to a Myrtlewood routing and how the Proposed Transaction would enhance CPKC's ability to compete for new traffic, particularly, for intermodal and automotive traffic; and provide CPKC's

forecasts of the traffic volumes that we expect would move over Myrtlewood post-consummation and completion of work to upgrade the Line to support Class I operations.

I. The Proposed Transaction Will Enable CPKC and CSXT to Establish an Efficient, Reliable, and Fast Premium Train Service

Today, CPKC and CSXT do not have an efficient direct connection in the southeast. Most traffic moving between CPKC-served points in Mexico and the Southwestern United States and CSXT-served points in the Southeastern United States must be routed via New Orleans, Brookwood, Alabama or East St. Louis, Illinois. Most of that traffic must utilize an intermediate carrier, requiring multiple handlings and coordination with other carriers adding to transit times and costs.

The Proposed Transaction will create a new Class I freight corridor between Meridian, Mississippi and Montgomery, Alabama with direct, efficient interchange between CPKC and CSXT at Myrtlewood. This new Class I freight corridor will enable CPKC-CSXT to provide shippers a premium freight rail service option between the Southeastern and Southwestern United States and between the Southeastern United States and Mexico by removing the need to handoff to an intermediate carrier and reducing handling events, enabling service over shorter, less circuitous and less congested routes, and by enabling a near seamless interchange with CSXT at Myrtlewood. The shorter more efficient routes also will reduce fuel consumption, lowering the transportation carbon footprint. Thus, CPKC and CSXT will be able to provide fast, reliable, environmentally friendly, competitive service between these markets. Shorter transit times also benefit shippers by lowering equipment costs and inventory carrying costs. These advantages will give shippers the option to shift existing CPKC-CSXT traffic from less efficient routings, and enable CPKC-CSXT to compete for existing and future traffic, particularly for automotive and

intermodal traffic that otherwise moves on the highways, via short-sea carriers, and on other rail carriers.

II. Methodology

My team was tasked with forecasting the amount of traffic that we anticipate would move via Myrtlewood following consummation of the Proposed Transaction and completion of work on both CPKC's line from Meridian to Myrtlewood and CSXT's line from Myrtlewood to Montgomery to bring the respective lines up to Class I standards. In making our forecasts, we identified shippers, both existing and future, that would benefit from the many advantages of a CPKC-CSXT direct routing relative to existing alternatives. Our forecasts are based on our deep knowledge and experience with the transportation markets. Further, our forecasts take into account CPKC's obligations to Norfolk Southern under the Meridian Speedway LLC agreements.

We caution that our traffic forecasts are just that, forecasts. While we believe that our estimates are reasonable, it is difficult to predict with any precision how much volume will move via Myrtlewood following consummation. The intermodal market in this area is particularly competitive due to, among other factors, the density of available truck drivers and generally favorable year-round weather and road conditions.

In addition, there are several variables in the intermodal and other markets that could affect future traffic volumes. In the automotive market, for example, several new CSXT-served vehicle assembly plants are scheduled to open in the next few years. We expect that once these plants are operational there will be an increase in automotive parts that move east from Mexico and the Southwestern United States to these plants. We also expect an increase in finished automotive traffic that moves west into Dallas/Fort Worth and other CPKC-served markets. At this point,

however, we do not know if any or all of the plants will ultimately be constructed as planned, their production volumes, or the extent and exact nature of their transportation needs.

III. CPKC-CSXT Myrtlewood Premium Service Will Provide an Attractive and Competitive Option to Intermodal, Automotive and Other Shippers.

That said, we have a high degree of confidence that due to the advantages of a CPKC-CSXT premium train service via Myrtlewood relative to other routings and other modes, train volumes would support the operation of one train a day in each direction. As discussed in greater detail below, we estimate volumes would average approximately 70 cars per train in the first three to five years of the transaction. Those volumes would consist of a mix of existing CPKC – CSXT traffic that would be rerouted over the more efficient Myrtlewood routing, CPKC-CSXT traffic that today moves in haulage via Myrtlewood, and new growth including traffic that is currently moving on other carriers and new traffic. We expect that volumes will increase, particularly as planned new automotive plants open, as transportation contracts for traffic currently moving over other routes and carriers expire, as our marketing efforts bear fruit, and through natural growth.

Based on our estimates, there will be available capacity on the CPKC-CSXT trains to support future growth for several years. For this reason, we do not anticipate the need to regularly operate additional trains, at least not for several years.

Below I discuss our forecasts of opportunities for rerouting existing CPKC-CSXT manifest interline traffic; commercial opportunities to attract existing automotive and intermodal opportunities to the new Myrtlewood routing; and the potential for attracting new growth traffic.

Existing CPKC-CSXT Manifest Traffic

Existing domestic CPKC-CSXT interline manifest traffic for which a Myrtlewood routing would be shorter and more efficient are obvious candidates for rerouting. These reroute

opportunities consist of traffic that currently moves over Shreveport, Louisiana and is interchanged with CSXT at New Orleans, Louisiana, for which a Myrtlewood routing is 158 miles shorter. We also looked at traffic that currently routes over an intermediate bridge carrier for interchange with CSXT at Brookwood, Alabama, for which a Myrtlewood routing is 104 miles shorter and avoids the need to use an intermediate carrier. And we looked at traffic that is interchanged with CSXT at E. St. Louis to for example, Louisville, for which a Myrtlewood routing is 255 miles shorter. Some of this traffic, however, originates or terminates near one of the three locations, and therefore would not benefit from rerouting. Approximately { [REDACTED] } loaded cars annually would benefit from the shorter, more efficient, and more reliable Myrtlewood routing.¹

Existing Automotive Traffic

A direct connection with CSXT at Myrtlewood would offer significant advantages over the current routing of automotive traffic between Mexico and CSXT-served facilities in the Southeastern United States. The available direct links between the CPKC and CSXT networks generally do not provide competitive options for this traffic category, for the reasons discussed above. Instead, as shown in Figure 1 below, automotive traffic moving between CSXT and CPKC (KCSM)-served locations, is typically interchanged with a bridge carrier in Laredo and in New Orleans, East St. Louis, or Memphis. The use of a bridge carrier generally adds transit time, additional handling events, and cost to the move.

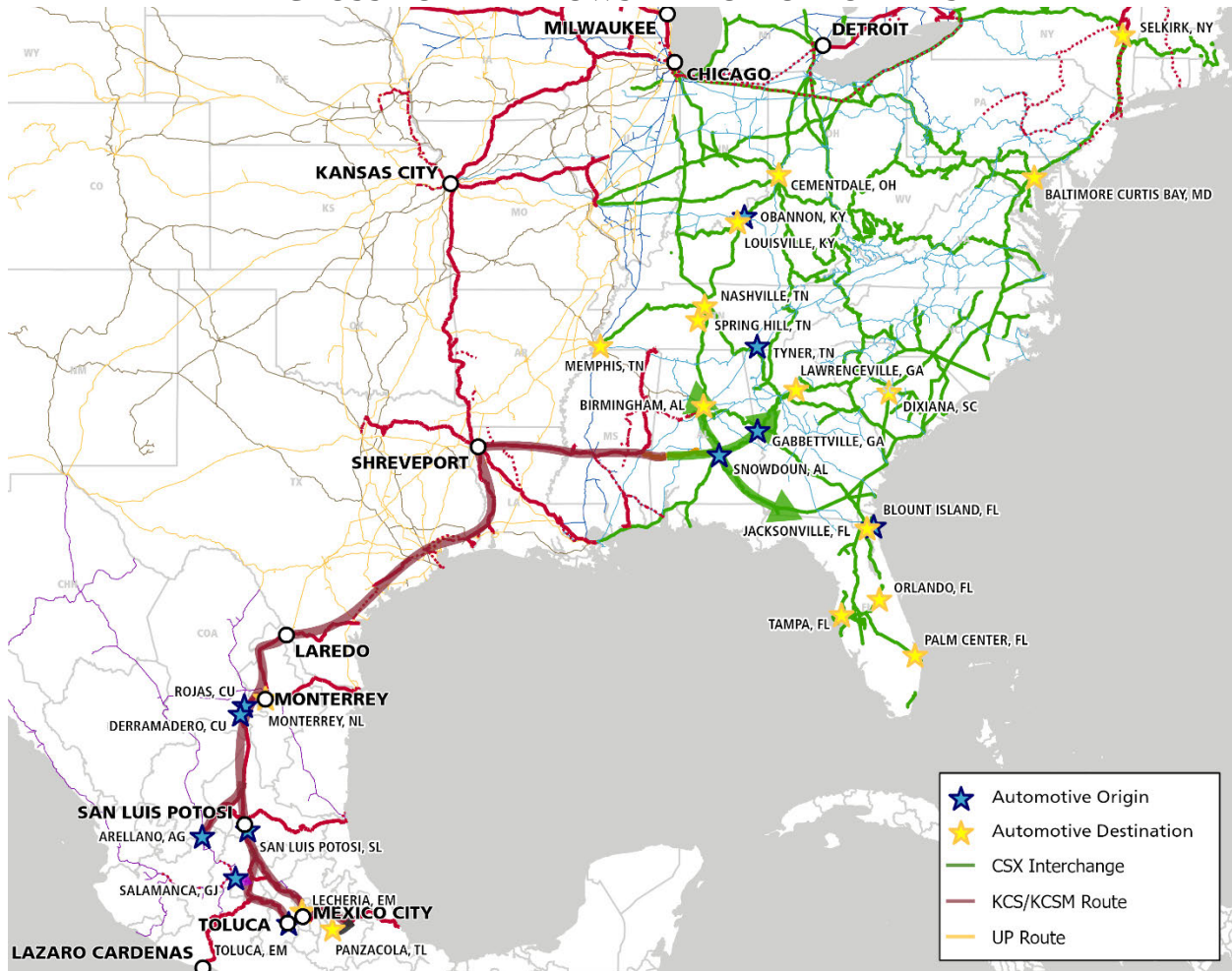
¹ Empty cars would likely return using the same routing.

Figure 1
CPKC-CSXT AUTOMOTIVE CURRENT CROSS BORDER
TRAFFIC FLOWS AND OPPORTUNITIES



A CPKC direct to CSXT routing via Myrtlewood would provide shippers a new competitive alternative. Compared with existing CPKC-CSXT interline options, a Myrtlewood routing would offer faster transit times and more efficient and reliable service with fewer handling events, enabling stronger competition against other transportation options. See Figure 2 below.

Figure 2
CPKC-CSXT AUTOMOTIVE TRAFFIC POST-TRANSACTION
CROSS BORDER FLOWS AND OPPORTUNITIES



Additionally, a direct Myrtlewood routing would also offer a more effective competitive alternative for finished automotive traffic moving between CSXT-served facilities in the Southeastern United States and destinations in the Southwestern United States, including the Dallas market in particular. Today, imported finished autos move by truck between Florida ports and Dallas. Other automotive traffic moves via rail today, and the new, more-efficient CSXT-CPKC routing via Myrtlewood will provide a robust new alternative that will offer premium rail service capable of attracting service sensitive automotive traffic.

A Myrtlewood direct routing would also offer a better option for finished automotive traffic that currently moves via ocean vessel from Mexico to markets in the Southeastern United States. Such “short sea” moves require transporting cars from plant to port where they must be loaded on to a Ro/Ro vessel for movement to a United States port where the vehicles must be unloaded and moved inland. Because of the multiple handlings required, short sea moves typically experience a high rate of vehicle damage. Because of port congestion and associated long queues to enter Mexican ports, short sea moves often experience high dwell times. A Myrtlewood direct routing would offer a more efficient and higher quality move. The traffic would experience less dwell and better overall transit times with fewer car handlings, and accordingly, reduced risk of damage, all at rates that would be highly competitive with a short sea routing.

In all, we estimate that a CPKC-CSXT direct routing via Myrtlewood would attract approximately {{[REDACTED]}} loaded automotive cars annually.

Automotive Growth Opportunities

Four new automotive assembly plants are scheduled to open in the Southeast in or after 2025. They include a Ford Motor Co. plant in Stanton, Tennessee; a Hyundai plant in Bryan County, Georgia; a Rivian plant in Commerce, Georgia; and a VinFast plant in Moncure, North Carolina. Because of the uncertainties discussed above, we are not in a position to forecast the volumes from or to these plants likely to move between the Southeastern United States and the Southwestern United States and Mexico. While we cannot reliably estimate the volumes, establishing a premium train service product via Myrtlewood will put us in a strong position to compete for, and win, any such traffic.

Intermodal Traffic

Based on conversations with certain motor carriers, we expect some intermodal traffic that currently moves on other railroads to find a CPKC-CSXT premium train service over Myrtlewood more attractive. This includes approximately {{ [REDACTED] }} containers per week westbound, or approximately, or {{ [REDACTED] }}. {{ [REDACTED] }}.

Additionally, CPKC-CSXT will be able to compete for intermodal shipments that currently move by motor carrier. The most promising opportunities in that regard are automotive parts, particularly for companies that have plants in both Mexico and in the Southeastern United States. We also see opportunities to attract temperature controlled commodities, such as frozen poultry, that currently move from the Southeastern United States to Mexico in refrigerated trucks. CPKC has recently invested in new refrigerated equipment and has enjoyed success in attracting cross border refrigerated traffic. With the CPKC-CSXT direct service, we estimate that we will be able to attract approximately {{ [REDACTED] }} refrigerated cars annually that would otherwise move on our highways.

VERIFICATION

I, Jonathan Wahba, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this ___th day of October, 2023.

DocuSigned by:

F37AEF2F9145450...

Jonathan Wahba

APPENDIX 4

VERIFIED STATEMENT OF MATTHEW O. WALSH

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C. IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO
COUNTIES, ALABAMA**

VERIFIED STATEMENT OF MATTHEW O. WALSH

My name is Matthew O. Walsh. I am the Executive Vice President, Global Corporate Development for Genesee & Wyoming Inc. (“G&W”) where I have worked for the past 22 years. I oversee business development at G&W, supporting G&W and its subsidiaries in all major capital projects, including acquisitions, divestitures, leases and strategic contracts. I also previously acted as Treasurer of G&W from 2006-2012. Prior to joining G&W in 2001, I was an investment banker at Salomon Smith Barney, Inc., and Schroder and Co., Inc., both in New York and London. I currently serve as Chair of the Board of Directors of the American Short Line and Regional Railroad Association and previously served as Chair of the Short Line Safety Institute and as a member of the Board of the Railroad Clearinghouse. I am a graduate of Princeton University.

I have been deeply involved in negotiating with CPKC for G&W to acquire rights with respect to two Canadian properties in exchange for ownership and control by The Kansas City Southern Railway Company (“KCS”) of Meridian & Bigbee Railroad, L.L.C.’s (“MNBR”) rail

line between Meridian, Mississippi and Myrtlewood, Alabama, subject to MNBR's retained trackage rights.

The purpose of my statement is to explain the benefits of the MNBR transaction for MNBR and its customers, and to express G&W's support for the STB's expeditious action on CPKC's Application, as well as all related proceedings.

As background, MNBR is a Class III railroad that currently operates between Meridian, MS and Montgomery, AL. MNBR owns the line between Meridian and Myrtlewood (the "Western Segment"). MNBR also owns the connecting line (and leases from CSX Transportation, Inc. ("CSXT") the right of way) from Myrtlewood to Burkville, Alabama, and holds incidental overhead trackage rights between Burkville and Montgomery (together, the "Eastern Segment").

MNBR provides local service to 11 customers on the line between Myrtlewood and Meridian and handles overhead traffic on the Western Segment as well. MNBR currently interchanges traffic with its affiliate, Alabama & Gulf Coast Railway LLC ("AGR"), at Myrtlewood, AL; with CPKC and Norfolk Southern Railway Company ("NS") at Meridian, MS; with NS at Selma, AL; and with CSXT at Montgomery.

Under the Proposed Transaction with CPKC, MNBR will retain perpetual exclusive trackage rights on the Western Segment to continue to provide rail service to existing local shippers and to handle AGR overhead service to Meridian, and non-exclusive rights to handle other traffic. MNBR's retained trackage rights on the Western Segment will be without any interchange restriction. MNBR will continue to interchange with CPKC and NS at Meridian. MNBR is also entering into a separate transaction with CSXT under which CSXT will reacquire the rail line comprising the Eastern Segment upon the expiration of the underlying lease referenced above. Consequently, KCS will grant AGR and CSXT overhead trackage rights to enable MNBR to

interchange with CSXT and AGR near Myrtlewood. Under the trackage rights to be granted by KCS, AGR and CSXT will also have the right to interchange with each other near Myrtlewood.

MNBR and G&W believe that the Proposed Transaction will benefit all stakeholders, including MNBR and its customers. MNBR will continue to be able to provide service to local and overhead shippers on the Western Segment just as it does today and will do so on track and bridges that CPKC plans to upgrade and maintain to CPKC standards.

The upgraded track infrastructure should improve MNBR's service reliability and efficiency by allowing MNBR to operate at higher speeds and to operate during the day on high heat days (currently, MNBR operates at night whenever the temperature is above 95 degrees in order to avoid the risk of sun kinks in the track). The upgraded track infrastructure adds an additional measure of safety to MNBR's already safe operations.

Moreover, CPKC's assumption of the maintenance obligation is of particular benefit as it pertains to the aging bridge infrastructure. CPKC will be able to bring its Class I resources to bear on maintaining and improving the 31 bridges on the Western Segment to a higher standard than MNBR would be able to achieve alone.

Under the Proposed Transaction, MNBR is retaining use of the Meridian Yard and equipment repair facilities there, as well as the Naheola Yard, to support its continued operations on the Western Segment. CSXT is also planning to make certain infrastructure improvements at Myrtlewood Yard to support interchange with MNBR and AGR. We are confident that, with CSXT's planned improvements, there will be sufficient capacity to support efficient interchange among the various railroads at Myrtlewood for years to come.

We are also confident that there is sufficient capacity on the Western Segment to support both CPKC and MNBR operations. We understand that CPKC intends to operate two trains daily

between Meridian and Myrtlewood in run-through service, which we expect will leave plenty of capacity for MNBR to continue to provide its local and overhead service. Even if CPKC were to add an additional train pair sometime in the future, we believe there is sufficient existing capacity to support both railroads' operations.

We are excited to be a part of the transformation of this lower density line to a Class I freight corridor, while at the same time preserving our ability to continue to provide local service and access to multiple connecting carriers without restriction. We urge the Board to act expeditiously on CPKC's application, as well as all related proceedings, so that all stakeholders, including our customers, can begin enjoying the benefits of the Proposed Transaction.

VERIFICATION

I, Matthew O. Walsh, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this 6th day of October, 2023.



Matthew O. Walsh

APPENDIX 5
SUPPORT STATEMENTS

Alliance For Growth

City of Meridian, Mississippi

Commissioner Willie Simmons, State of Mississippi Transportation
Commission

East Mississippi Business Development Corporation

Executive Director Brad White, Mississippi Department of
Transportation

Lauderdale County Board of Supervisors

Mississippi Development Authority

Representative Charles Busby, Mississippi House of Representatives

Senator Rod Hickman, Mississippi Senate

Southern Rail Commission



Alliance For Growth
William T. Hannah
President
200 22nd Avenue
Meridian, MS 39301
bhannah@embdc.org
601-693-1306

August 16, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

The Board of Directors of the **Alliance For Growth** SUPPORTS CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

The Alliance For Growth is a "committee of 100" supporting Economic Development in Lauderdale County, Mississippi. We are very aware of the huge implications of this acquisition. Our community was founded on the railroads and has always had rail options for our local industries. Adding the Canadian Pacific to the Kansas City Southern, now CPKC, opens up an entire new section of the country to our industries, as well as Canada and Mexico. Not wasting any time, the CPKC is now looking to bring another Class 1 railroad through our community, CSX Rail, which expands the reach of our industries, even more.

We FULLY support CPKC's proposed acquisition of the MNBR. Again, directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive, and other shippers between markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

We URGE the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. T. Hannah", is written below the word "Sincerely,".



Board of Directors

2022-2023

Archie McDonnell, CEO
Citizens National Bank
AFG Chairman

Tim Hogan, President
Mitchell Signs

Michael Dudley, CEO
Commercial Bank of Mississippi
AFG Vice Chairman

Larkin Kennedy, CEO
Rush Health Systems

John Anderson, CEO
Anderson Regional Health System

Bruce Martin, President
Meyer & Rosenbaum, Inc.

Mike Castle, CEO
Castle

Alex Weddington, President
General Supply, Inc.

Marty Davidson, Chairman
Southern Pipe & Supply Company

Tom Williams, President
Meridian Airport Authority

Bob Luke, Principal
LPK Architects
AFG Immediate Past Chairman



Mayor

JIMMIE SMITH, SR.
(P) 601.485.1927
(F) 601.485.1911

City Council

GEORGE M THOMAS
Ward 1

DWAYNE DAVIS
Ward 2

JOSEPH NORWOOD
Ward 3

ROMANDE WALKER
Ward 4

TY BELL LINDSEY
Ward 5

COUNCIL CLERK
(P) 601.485.1959
(F) 601.485.1913

City Departments

Chief Administrative Officer
(P) 601.485.1929
(F) 601.485.1911

Community Development
(P) 601.485.1910
(F) 601.484.6813

Finance and Records
(P) 601.485.1946
(F) 601.485.1979

Fire
(P) 601.485.1822
(F) 601.485.1035

Public Safety
(P) 601.484.6890
(F) 601.484.6895

Parks and Recreation
(P) 601.485.1802
(F) 601.485.1851

Police
(P) 601.485.1841
(F) 601.484.6832

Public Works
(P) 601.485.1920
(F) 601.485.1864

August 7, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

I am writing on behalf of the City of Meridian Mississippi to express strong support for CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

The City of Meridian was founded on the railroads and has always had rail options for our local industries. Adding the Canadian Pacific to the Kansas City Southern lines opens up an entire new section of the country to our existing industries. This proposed new Class 1 railroad expands the reach of our industries even more.

We are pleased to support CPKC's proposed acquisition of the MNBR. By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive, and other shippers between markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

In view of these many benefits, we urge the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,

Jimmie Smith, Mayor



State of Mississippi
TRANSPORTATION COMMISSION

COMMISSIONER WILLIE SIMMONS
CENTRAL DISTRICT

August 15, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

As Commissioner of the Central District Mississippi Department of Transportation, I support the CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

This acquisition will bring more shipping options to intermodal, automotive and other customers by providing a new, efficient corridor connecting markets throughout the Southeast. This east-west connection railway's route will provide freight traffic to our highways. CPKC's ownership of the line is an investment, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed rail corridor.

I am confident that this agreement to create new direction connection and corridor linking Mexico, Texas and the U.S. Southeast will also provide an economic boost. As Commissioner of the Central District, I strongly urge the acquisition of this merger between Meridian & Bigbee Railroad's Line.

Sincerely,

A handwritten signature in cursive script, reading "Willie Simmons".

Willie Simmons
Commissioner, Mississippi Department of Transportation Central District



East Mississippi Business
Development Corp
William T. Hannah
President/CEO
200 22nd Avenue
Meridian, MS 39301
bhannah@embdc.org
601-693-1306

August 16, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

The Board of Directors of the **East Mississippi Business Development Corporation** SUPPORTS CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

As Lauderdale County, Mississippi's Chamber of Commerce, Main Street and Economic Development Organizations we are very aware of the huge implications of this acquisition. Our community was founded on the railroads and has always had rail options for our local industries. Adding the Canadian Pacific to the Kansas City Southern, now CPKC, opens up an entire new section of the country to our industries, as well as Canada and Mexico. Not wasting any time, the CPKC is now looking to bring another Class 1 railroad through our community, CSX Rail, which expands the reach of our industries, even more.

We FULLY support CPKC's proposed acquisition of the MNBR. Again, directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive, and other shippers between markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

We URGE the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,

A handwritten signature in purple ink, appearing to read 'W. Hannah', is written over the 'Sincerely,' text.

Attached: EMBDC Board of Directors



Support Growth
Connect People
Build Leaders

East Mississippi Business Development Corporation

**EAST MISSISSIPPI BUSINESS DEVELOPMENT CORPORATION
2022-2023 BOARD OF DIRECTORS**

****Ms. Ann Alexander** Emerita
A & B Electric Co., Inc.

***Mr. Larkin Kennedy - Chair**
Ochsner Rush Health

Mr. Richmond Alexander
Engineering Plus

Mr. Donnie Massey
D&H Construction & Cabinetry

***Mr. John Anderson – Sec/Trea**
Anderson Regional Health System

Mr. Justin McDonald
Yates Companies

Ms. Kacey Bailey
Glover, Young, Hammock, Walton & Simmons, PLLC

***Mr. Archie McDonnell, Jr. – Past Chair**
Citizens National Bank

Mr. Jonathan Bell
Vital Care

***Mr. Chris Phillips**
Mississippi Power Company

Mr. Cole Cardwell
Structural Steel Services, Inc.

Mr. Jerome Roberts
Autokiniton

*****Dr. John-Mark Cain – Education**
Lauderdale County School District

Mr. Wade Sims
Wells Fargo Advisors

***Jimmy Copeland**
Copeland Holdings

***** Colonel Cindy Smith – Military**
186th Air Refueling Wing

Mr. Jorge' Frias
Pioneer Automotive

***Mr. Daniel Wile – V. Chair**
Southern Cast Products

Mr. David Hall
Hall Timberlands

*Executive Committee
** Emerita
*** Ex-Officio

REV. 08/2022

Jeff Ely, P.E.
Chief of Staff
Charles R. Carr
Director, Office of Intermodal Planning



P.E.
Deputy Executive Director/Chief Engineer
Lisa M. Hancock, CPA
Deputy Executive Director/Administration

Brad White
Executive Director

August 15, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

**Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between
Meridian, MS and Myrtlewood, AL**

Dear Ms. Brown:

I am writing to express our support for CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

As Director of the Mississippi Department of Transportation, I understand the connection between rail and jobs. Mississippi's employers are currently served by a strong network of Class I and short-line railroads. Strengthening Mississippi's rail infrastructure is a vital piece of our continued economic development strategy.

By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options in Mississippi for intermodal, automotive, and other shippers to markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

In view of these many benefits, we urge the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad White", is written over a light blue horizontal line.

Brad White

BOARD OF SUPERVISORS

JONATHAN WELLS, DISTRICT 1
WAYMAN NEWELL, DISTRICT 2
JOSH TODD, DISTRICT 3
JOE NORWOOD, DISTRICT 4
KYLE RUTLEDGE, DISTRICT 5



CAROLYN MOONEY
Chancery Clerk

CHRIS LAFFERTY
County Administrator

LEE THAGGARD
Board Attorney

410 Constitution Avenue, 11th Floor Meridian, MS 39301
Telephone: (601) 482-9746 Fax: (601) 482-9744
www.lauderdalecounty.org

August 7, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

I am writing on behalf of the Lauderdale County Board of Supervisors to express strong support for CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

With a history steeped in rail, Lauderdale County serves as the obvious choice for any rail growth that increases access Mexico and Canada. Expanding the rail line to Myrtlewood AL will maximize the effectiveness of CPKC's impact on not only the region, but the entire country. This addition will create opportunities for existing industry to flourish, create new opportunities, and it will ultimately lead to increased employment for an underserved population. The additional rail will serve as a catalyst that will change the landscape and future of our region.

We are pleased to support CPKC's proposed acquisition of the MNBR. By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive, and other shippers between markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

In view of these many benefits, we urge the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,


Jonathan Wells
President/District 1 Supervisor
Lauderdale County Board of Supervisors



State of Mississippi

TATE REEVES
Governor

MISSISSIPPI DEVELOPMENT AUTHORITY

August 14, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

**Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS
and Myrtlewood, AL**

Dear Ms. Brown:

I am writing to express the Mississippi Development Authority's support for CPKC's proposed acquisition of a rail line between Meridian, Mississippi, and Myrtlewood, Alabama, currently owned by the Meridian & Bigbee Railroad (MNBR).

Mississippi's employers currently are served by a strong network of Class I and shortline railroads. Strengthening Mississippi's rail infrastructure is a vital piece of our continued economic development strategy.

By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive and other shippers between markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow MNBR to continue serving its existing shortline customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line, which will promote the safe, reliable and efficient movement of goods and enhance economic development along the newly formed Class I rail corridor.

In view of these many benefits, we urge the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Hipp".

Laura Hipp
Deputy Executive Director

Mississippi House of Representatives

COMMITTEE ASSIGNMENTS:

Transportation- Chairman
Appropriations
Education
Energy
Gaming
Insurance
Interstate Cooperation
Marine Resources
Ports, Harbors and Airports



901 Beach Blvd.
Pascagoula, MS 39567
Office: 228.769.0501
cbusby@house.ms.gov

REPRESENTATIVE CHARLES BUSBY
District 111
Jackson County

August 14, 2023

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

I am writing to express our support for CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR). As chairman of the House Transportation Committee, I understand the connection between rail and jobs. Mississippi's employers are currently served by a strong network of Class I and short-line railroads. Strengthening Mississippi's rail infrastructure is a vital piece of our continued economic development strategy.

By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options in Mississippi for intermodal, automotive, and other shippers to markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

In view of these many benefits, we urge the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Busby", is written over a light blue horizontal line.

New Capitol • Post Office Box 1018 • Jackson, MS 39215-1018
Office: 601.359.3355 • Email: cbusby@house.ms.gov



Mississippi State Senate

COMMITTEE ASSIGNMENTS:

Interstate & Fed Cooperation, Vice Chair
Agriculture
Appropriations
Forestry
Investigate State Offices
Judiciary B
State Library
Wildlife, Fisheries & Parks

SENATOR ROD HICKMAN

District 32
Kemper, Lauderdale, Noxubee &
Winston Counties
2429 Jefferson Street
Macon, Mississippi 39341

info@rodhickman.com
www.rodhickman.com

August 8, 2023

To: Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between
Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

I am writing to express strong support for CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

As the state senator representing Lauderdale, Kemper, Noxubee and Winston counties, including most of the city of Meridian, I am pleased to support CPKC's proposed acquisition of the MNBR. By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive, and other shippers between markets in the southeast United States and markets in the southwest United States and Mexico. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers on the acquired line in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

In view of these many benefits, we urge the Surface Transportation Board to approve CPKC's proposed acquisition expeditiously.

Best,

A handwritten signature in black ink that reads "Rod Hickman". The signature is fluid and cursive, with a large loop at the end.

Rod Hickman



SOUTHERN RAIL COMMISSION

August 9, 2023

Cynthia T. Brown
 Chief, Section of Administration
 Surface Transportation Board
 395 E Street SW
 Washington, DC 20423

Re: CPKC's Acquisition of Meridian & Bigbee Railroad's Line Between Meridian, MS and Myrtlewood, AL

Dear Ms. Brown:

I am writing on behalf of the Southern Rail Commission to express strong support for CPKC's proposed acquisition of a rail line between Meridian, MS and Myrtlewood, AL currently owned by the Meridian & Bigbee Railroad (MNBR).

The Southern Rail Commission's members are appointed by the governors of Alabama, Louisiana, and Mississippi. Our mission includes promoting the safe, reliable and efficient movement of people and goods to enhance economic development along rail corridors and to provide transportation choices.

Consistent with our mission, we are pleased to support CPKC's proposed acquisition of the MNBR. By directly linking two Class I railroads—CPKC and CSX—this acquisition will create more competitive options for intermodal, automotive, and other shippers. At the same time, the acquisition will allow the MNBR to continue serving its existing short-line customers in Alabama and Mississippi. CPKC's ownership of the line will generate investment in the line which, in turn, will promote the safe, reliable, and efficient movement of goods, and enhance economic development along the newly formed Class I rail corridor.

I am also pleased to say that CPKC's acquisition will not interfere with any of the passenger rail commitments that CPKC undertook as part of its recent merger proceeding, including its commitment to "participate in a joint study with Amtrak, NSR, UP, and relevant government agencies, with the goal of introducing Amtrak service between Dallas, Texas and Meridian, MS." Passenger rail and freight rail are both important to the Commission, and this acquisition will support both.

In view of these many benefits, the Southern Rail Commission urges the Surface Transportation Board to approve CPKC's proposed acquisition with all due haste.

OFFICERS

Knox Ross
 Chairman

John Spain
 Vice Chairman

Toby Bennington
 Secretary-Treasurer

COMMISSIONERS

ALABAMA
 Gov. Kay Ivey

Toby Bennington
 Steven M. Brom
 Wiley Blankenship
 David Clark

LOUISIANA
 Gov. John Bel Edwards

Renee Lapeyrolerie
 Rep. Walt Leger
 Mayor Adrian Perkins
 John Spain
 Dr. Shawn Wilson
 Roy W. Woodruff, Jr.

MISSISSIPPI
 Gov. Tate Reeves

Frankie Castiglia Jr.
 Brian Fulton
 Katie Hood
 Kay Kell
 Knox Ross
 Dewitt Jerome Wall, III

Thank you for your consideration of the Commission's views.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Spain".

John Spain
State of Louisiana

A handwritten signature in cursive script, appearing to read "K. Ross".

Knox Ross
State of Mississippi

A handwritten signature in cursive script, appearing to read "Toby Bennington".

Toby Bennington
State of Alabama

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36732

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, D/B/A CPKC**

—ACQUISITION AND OPERATION—

**CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISSISSIPPI AND CHOCTAW AND MARENGO COUNTIES,
ALABAMA**

CERTIFICATE OF SERVICE

I hereby certify that I have caused Applicants Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC's Application (CPKC-11), CPKC's Reply to NS's Motion to Redesignate the Highly Confidential Designation of Certain Materials (CPKC-12), both revised in accordance with Decision No. 3, and this Certificate of Service (CPKC-13), to be served by e-mail or by first class mail this 11th day of December, 2023, on all parties of record, the Secretary of Transportation, and the Attorney General of the United States.

/s/ David F. Rifkind

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The Kansas City Southern Railway Company d/b/a CPKC*