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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FD 36865

OPSEU PENSION PLAN TRUST FUND, JAGUAR TRANSPORT  
HOLDINGS, LLC, AND JAGUAR RAIL HOLDINGS, LLC  
-- CONTROL EXEMPTION --  
COLUMBIA BASIN RAILROAD COMPANY, LLC

---

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

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(312) 252-1500

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

Dated: July 14, 2025

FILED  
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SURFACE TRANSPORTATION BOARD

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OPSEU Pension Plan Trust Fund (“OPTrust”), Jaguar Transport Holdings, LLC (“JTH”), and Jaguar Rail Holdings, LLC (“JRH,” and collectively with OPTrust and JTH, “Jaguar”), each a non-carrier, hereby file this notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Columbia Basin Railroad Company, LLC (“CBRW”),<sup>1</sup> an existing Class III railroad common carrier.<sup>2</sup>

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

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

OPTrust, JTH and JRH are non-carriers. OPTrust indirectly controls JTH, which, in turn, directly controls JRH. JTH currently controls, indirectly,

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<sup>1</sup> Formerly a corporation – Columbia Basin Railroad Company, Inc. (since reconstituted as a limited liability company).

<sup>2</sup> *Columbia Basin Railroad Company, Inc. – Acquisition and Operation Exemption – BNSF Railway Company*, FD 35066 (STB served Nov. 16, 2007) (“*Columbia Basin – Acquisition*”).

eleven Class III railroads. Of the eleven railroads currently under JTH's indirect control, eight – Southwestern Railroad, Inc. (“SWRR”), Texas & Eastern Railroad, LLC (“TERR”), Wyoming and Colorado Railroad, Inc. (“WYCO” – which also does business under the name “Oregon Eastern Railroad”), Missouri Eastern Railroad, LLC (“MER”), Charlotte Western Railroad, LLC (“CWRR”), Kinston Railroad, LLC (“KNR”), Waterloo Railroad LLC (“WTRL”), and Kansas City West Bottoms Railroad, LLC (“KCWB”) – are controlled directly by JRH. JRH also indirectly controls two other railroads – Cimarron Valley Railroad, L.C. (“CVRR”) and Washington Eastern Railroad, LLC (“WERR”) – through WYCO.<sup>3</sup> JTH indirectly controls West Memphis Base Railroad, L.L.C. (“WMBR”) through Jaguar Transport, LLC, a separate JTH subsidiary affiliated with JRH.<sup>4</sup> WMBR, SWRR, TERR, WYCO, CVRR, WERR, MER, CWRR, KNR, WTRL, and KCWB are collectively referred to herein as the “Jaguar Railroads.”<sup>5</sup>

JTH has entered into a Unit Purchase Agreement (the “Agreement”) to acquire control of CBRW. JTH will close on the CBRW transaction – thereby

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<sup>3</sup> See *OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC – Continuance in Control Exemption – Kansas City West Bottoms Railroad, LLC*, FD 36835 (STB served Feb. 19, 2025).

<sup>4</sup> *Id.*

<sup>5</sup> Concurrent with this acquisition of control notice of exemption, Jaguar is filing a separate notice of exemption to authorize Jaguar's acquisition of control of another Class III railroad carrier, Central Washington Railroad Company, LLC (“CWAR”), in FD 36866. CWAR's lines and CBRW's lines are each located in the State of Washington, but, in the furtherance of the respective class exemptions, CWAR's and CBRW's railroad networks do not connect or intersect.

adding to its short line holdings – upon or after the effective date of the present class exemption.

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

OPSEU Pension Plan Trust Fund  
1 Adelaide St. East, Suite 2900  
Toronto, Ontario M5C 3A7  
Canada  
(416) 681-6181

Jaguar Transport Holdings, LLC  
1027 South Main Street, Suite 403  
(417) 622 0384

Jaguar Rail Holdings, LLC  
c/o Jaguar Transport Holdings, LLC  
1027 South Main Street, Suite 403  
(417) 622 0384

Jaguar’s acquisition of control of CBRW is not a transaction where: (a) CBRW would connect with any of the Jaguar Railroads; (b) Jaguar plans through its acquisition of control of CBRW to connect CBRW to any of the Jaguar Railroads, or to connect any of the Jaguar Railroads to one another; or (c) a Class I carrier is involved. Accordingly, the proposed transaction satisfies the class exemption criteria at 49 C.F.R. § 1180.2(d)(2).

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

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

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

Jaguar intends to consummate its acquisition of control of CBRW upon or after the effective date of the present notice of exemption, which notice of exemption is currently expected to become effective as of August 13, 2025.<sup>6</sup>

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

The primary purpose of the transaction is for Jaguar to add CBRW to its various short line railroad holdings. The transaction will promote Jaguar's investment objectives, and sustain the Jaguar Railroads' efficiency, financial strength, and ability to meet customer needs.

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

Each of the Jaguar parties is a non-carrier, and the business address of each non-carrier Jaguar entity is supplied above. WMBR's lines are located in Arkansas. CVRR's lines are located in Kansas, Colorado, and Oklahoma. SWRR's lines are located in New Mexico, Texas and Oklahoma. TERR's lines are located in Texas. WERR's lines are located in Washington. WYCO's lines are located in Oregon. MER's lines are located in Missouri. CWRR's lines are located in North

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<sup>6</sup> In the interest of full disclosure, CBRW acquired the lines that comprise its railroad operation from BNSF Railway Company ("BNSF") per *Columbia Basin – Acquisition*. The purchase agreement governing the sale contains a right of first refusal ("ROFR") extending to BNSF the option to re-purchase CBRW's lines in the event of a proposed transfer-of-control such as the one presented here. BNSF is aware of the proposed CBRW change of control, but has not yet indicated whether it will forego its ROFR rights. BNSF has requested that Jaguar acknowledge the existence of BNSF's ROFR rights in this class exemption notice filing. Accordingly, closing on Jaguar's proposed acquisition of control will depend upon BNSF's (pending) response.

Carolina. KNR's lines are located in North Carolina. WTRL's lines are located in Iowa. KCWB's lines are located in Missouri and Kansas. CBRW's lines are located in Washington (as are the lines of CWAR, which, as stated above, do not connect or intersect with CBRW's lines).

**Maps - Exhibit A: 49 C.F.R. § 1180.6(a)(6)**

Maps showing the location of CBRW (and CWAR) and each of the current Jaguar Railroads (showing WYCO's line under its Oregon Eastern Railroad business name) are attached hereto as Exhibit A.

**Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)**

A redacted version of the above-referenced Unit Purchase Agreement is attached as Public Exhibit B. An unredacted, Highly Confidential version of the Agreement is being supplied under seal pursuant to a concurrently-filed motion for a protective order.

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

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

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

Under 49 C.F.R. § 1105.6(c)(1)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. Jaguar's

acquisition of control of CBRW will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

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

**Interchange Commitments: 49 C.F.R. § 1180.4(g)(3)**

The Board's rules require the filing party (Jaguar) to indicate whether "a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third party connecting carrier." 49 C.F.R. 1180.4(g)(3). The present transaction does not involve the proposed acquisition or operation of a rail line under the governing regulations, so the disclosure requirements are not applicable here. Nevertheless, the supplied Unit Purchase Agreement governing the present transaction does not contain an interchange commitment. See also Certification and Verifications (attached).

Respectfully submitted,

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

Robert A. Wimbish

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606-3208

rwimbish@fletcher-sippel.com

(312) 252-1500

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

Dated: July 14, 2025

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HOLDINGS, LLC, AND JAGUAR RAIL HOLDINGS, LLC  
-- CONTROL EXEMPTION --  
COLUMBIA BASIN RAILROAD COMPANY, LLC

---

**EXHIBIT A**

**MAPS OF THE JAGUAR RAILROADS,  
CENTRAL WASHINGTON RAILROAD COMPANY, LLC,  
AND COLUMBIA BASIN RAILROAD COMPANY, LLC**

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# Missouri Eastern Railroad

St. Louis, MO



-  Rock Island Junction
-  MER
-  Union Pacific
-  BNSF
-  TRRA
-  West Belt Railway
-  UP Leased Line
-  Highway

## Interchange

TRRA (UP, BNSF, NS, CSX, KCS, CN):

St. Louis, MO



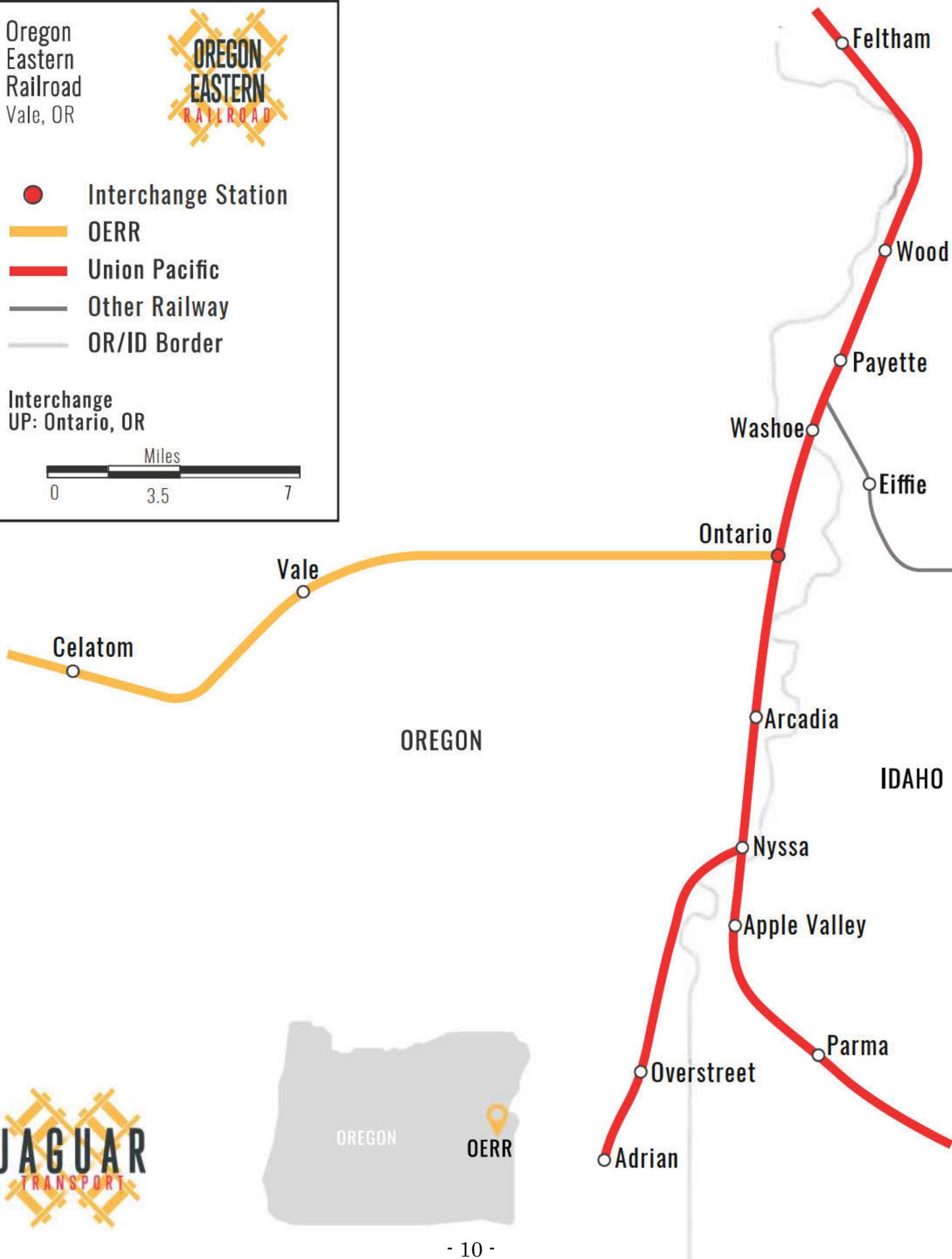
Oregon Eastern Railroad  
Vale, OR



- Interchange Station
- OERR
- Union Pacific
- Other Railway
- OR/ID Border

Interchange  
UP: Ontario, OR

Miles

# Southwestern Railroad - New Mexico, Texas and Oklahoma

**Southwestern Railroad**  
Deming, NM

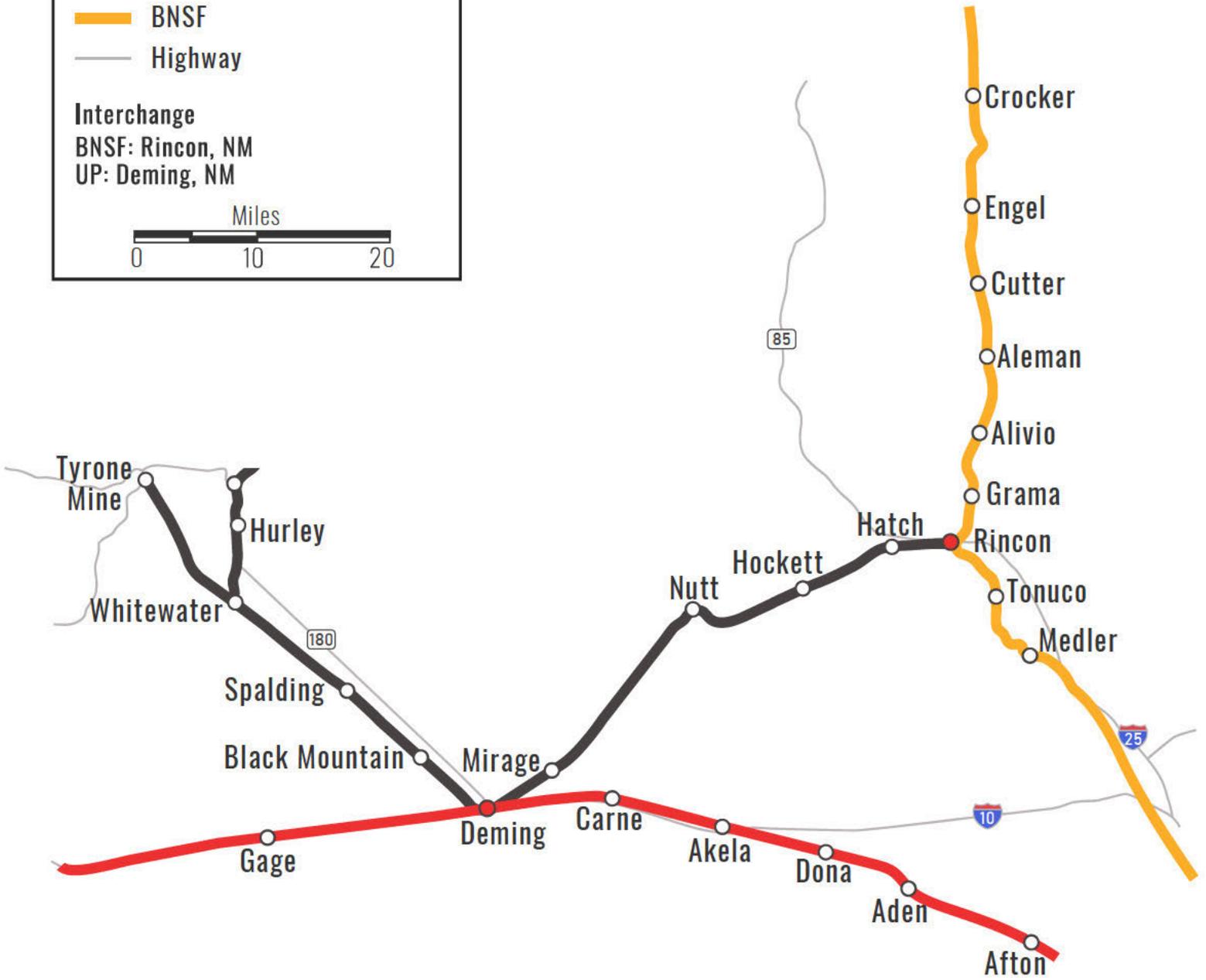


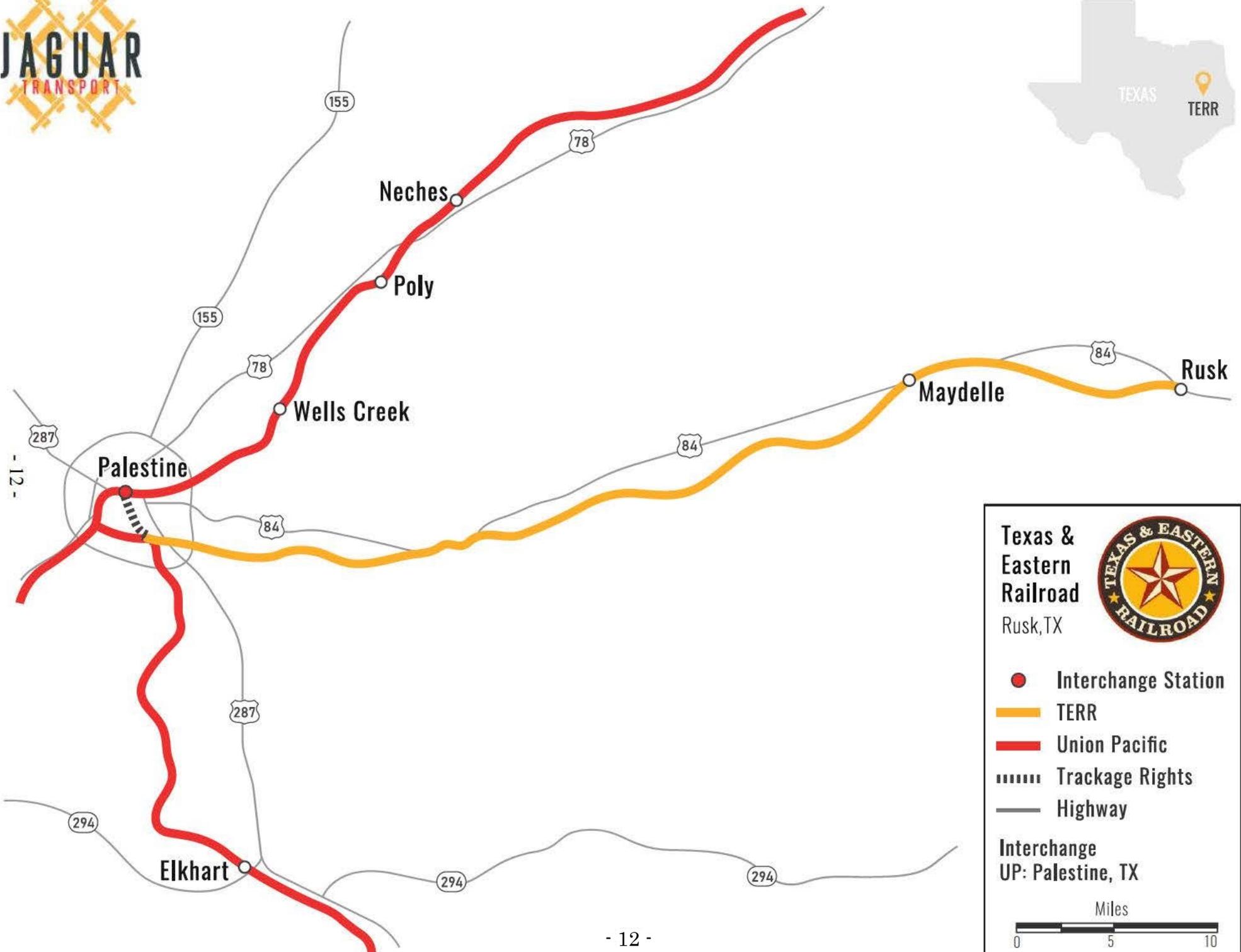
- Interchange Station
- SWRR
- Union Pacific
- BNSF
- Highway

**Interchange**  
BNSF: Rincon, NM  
UP: Deming, NM

Miles







- 12 -

- 12 -

**Texas & Eastern Railroad**  
Rusk, TX

- Interchange Station
- TERR
- Union Pacific
- Trackage Rights
- Highway

**Interchange**  
UP: Palestine, TX

Miles



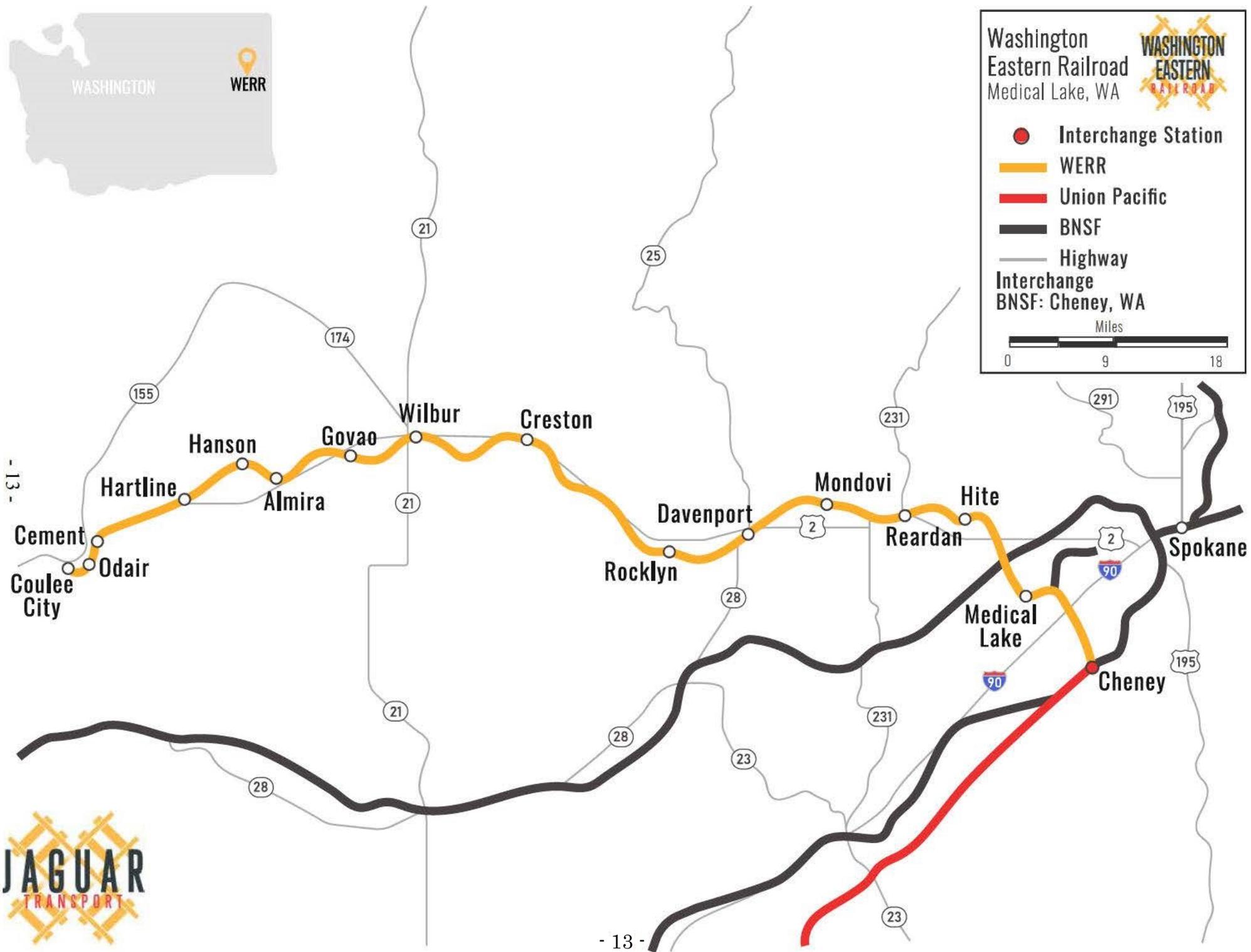
Washington Eastern Railroad  
Medical Lake, WA



- Interchange Station
- WERR
- Union Pacific
- BNSF
- Highway

Interchange  
BNSF: Cheney, WA

Miles



- 13 -



- 13 -



**West Memphis Base Railroad and Transload**

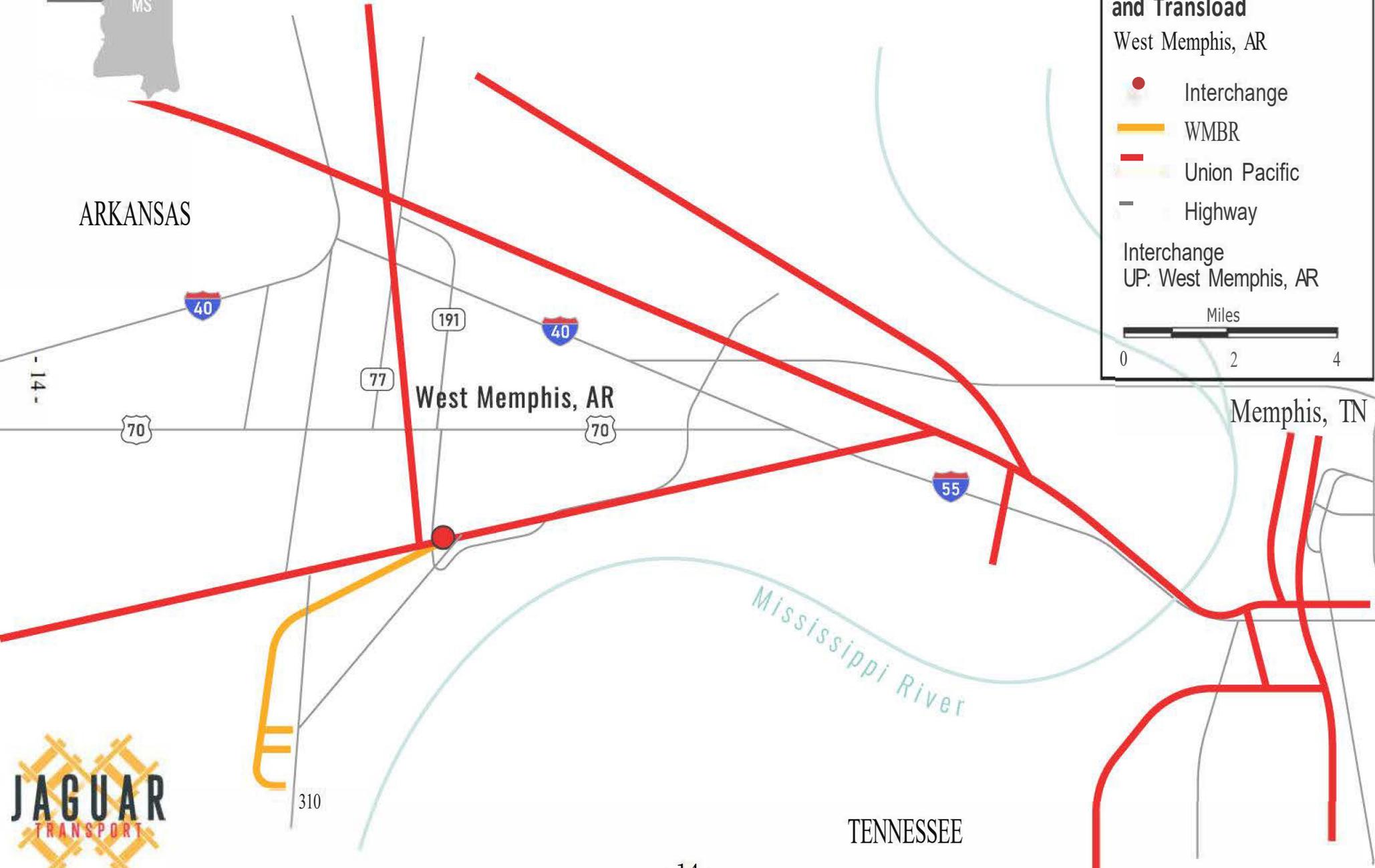


West Memphis, AR

- Interchange
- WMBR
- Union Pacific
- Highway

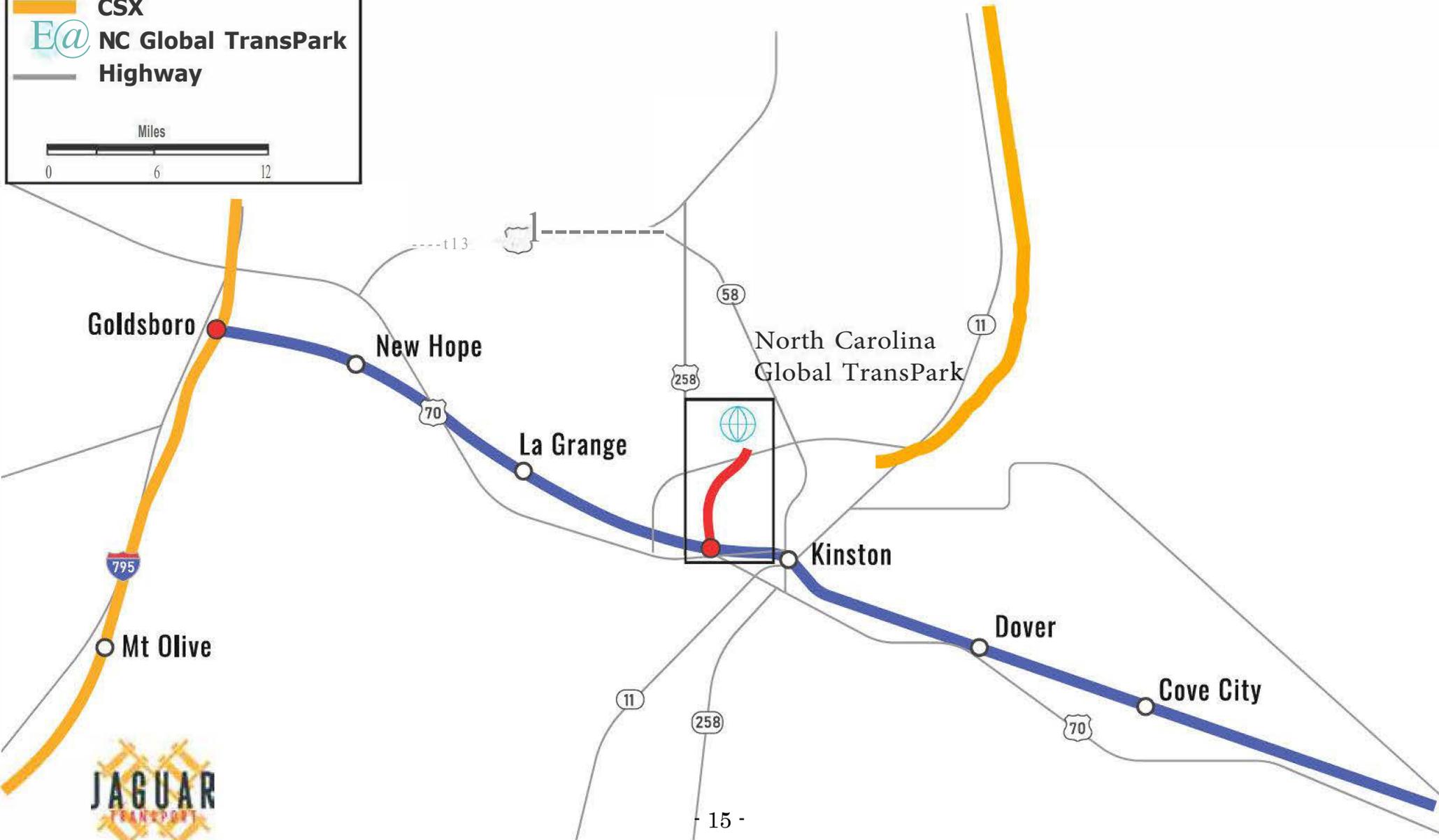
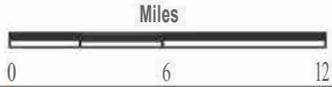
Interchange  
UP: West Memphis, AR

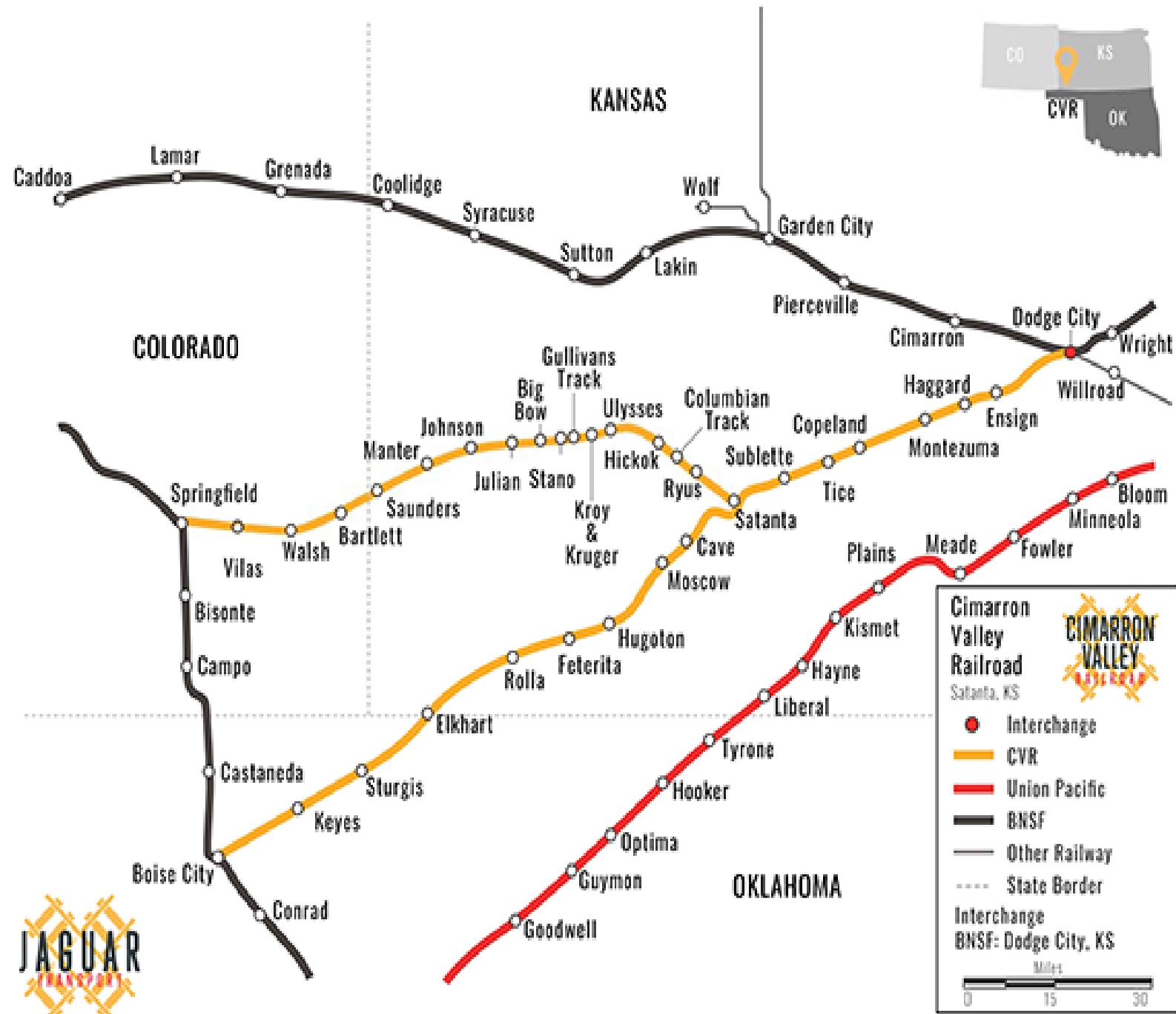
Miles



# Kinston Railroad Kinston, NC

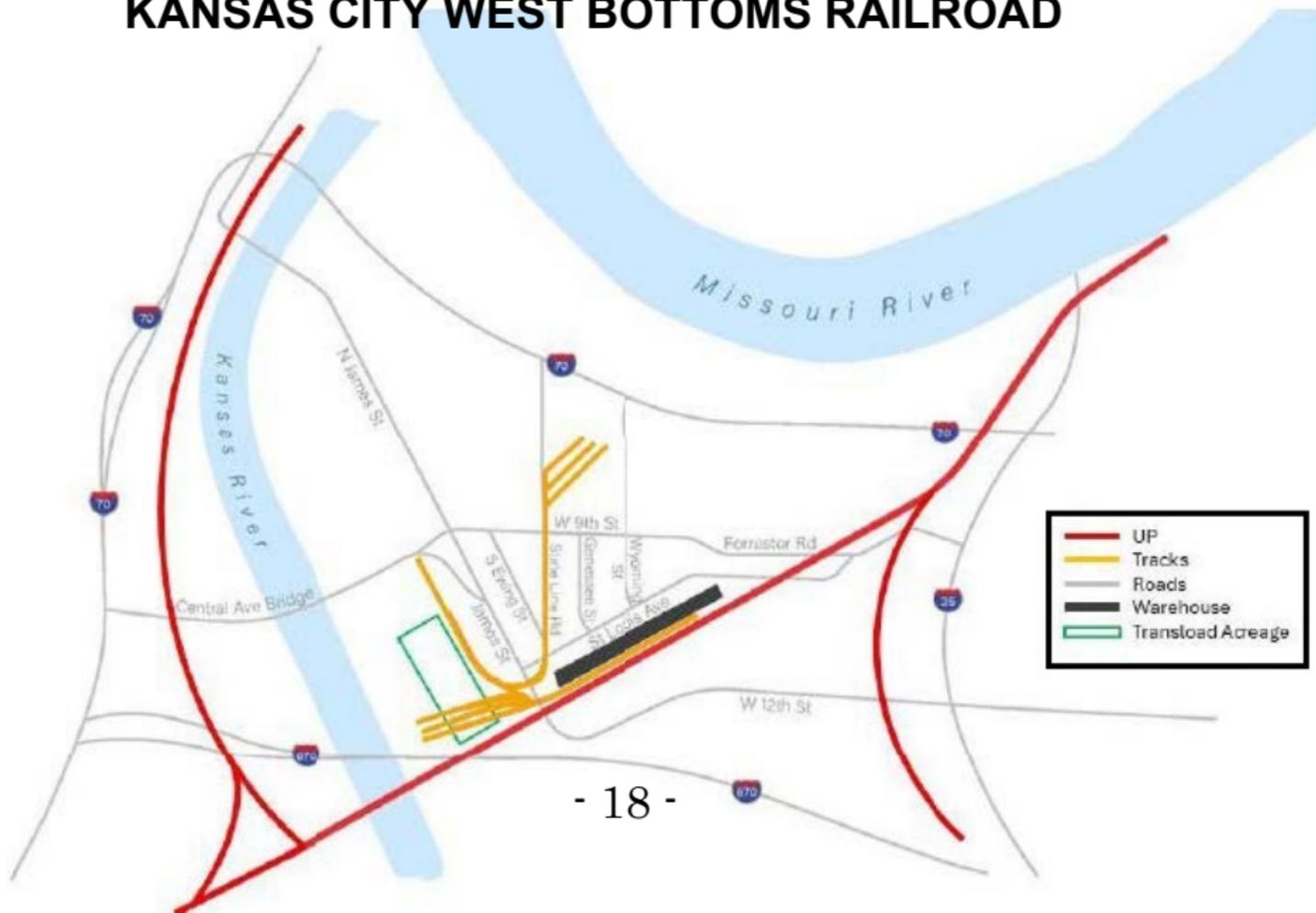
- Interchange
- █ Kinston Railroad
- █ Norfolk Southern
- █ CSX
- E@ NC Global TransPark
- █ Highway



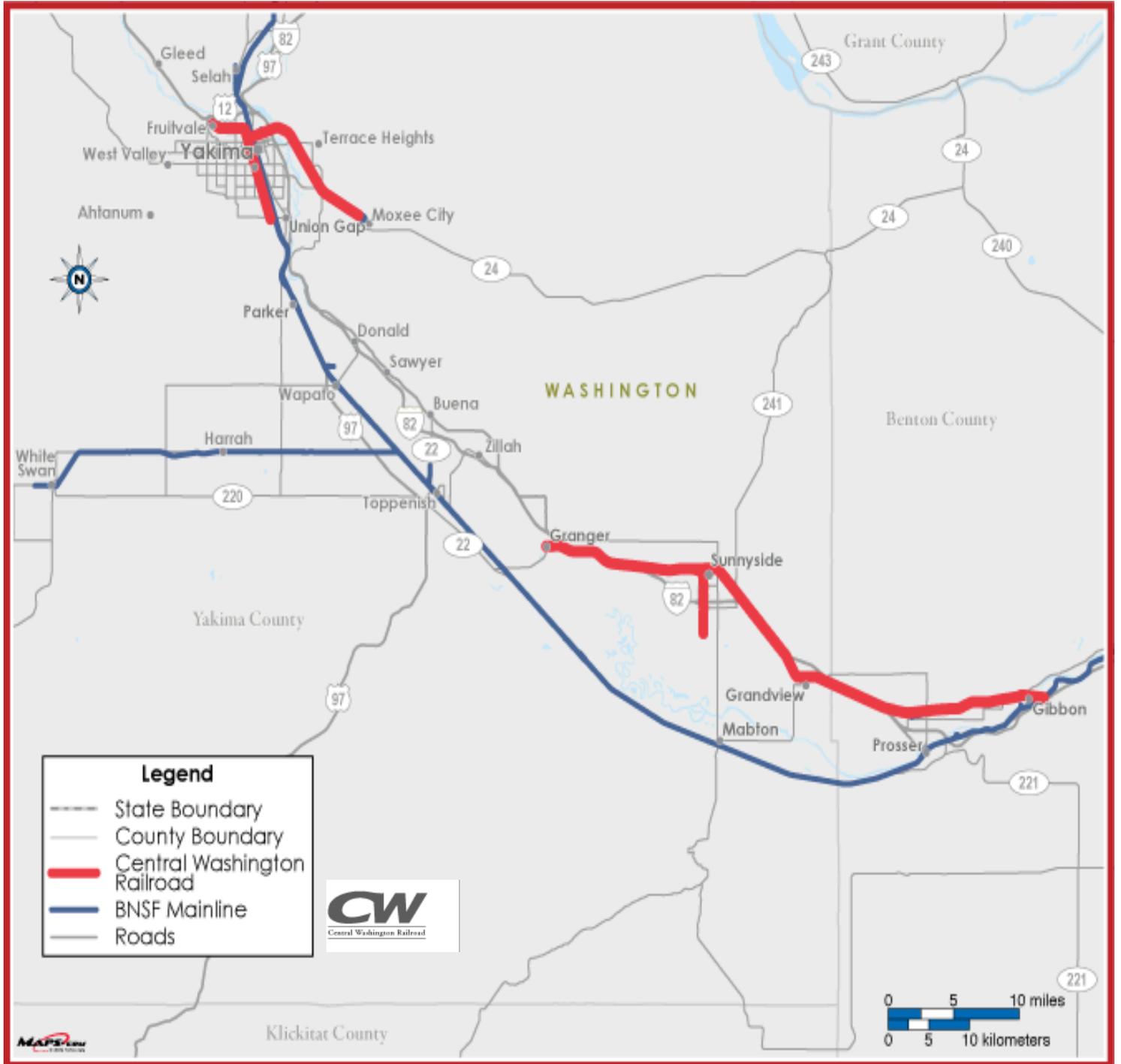




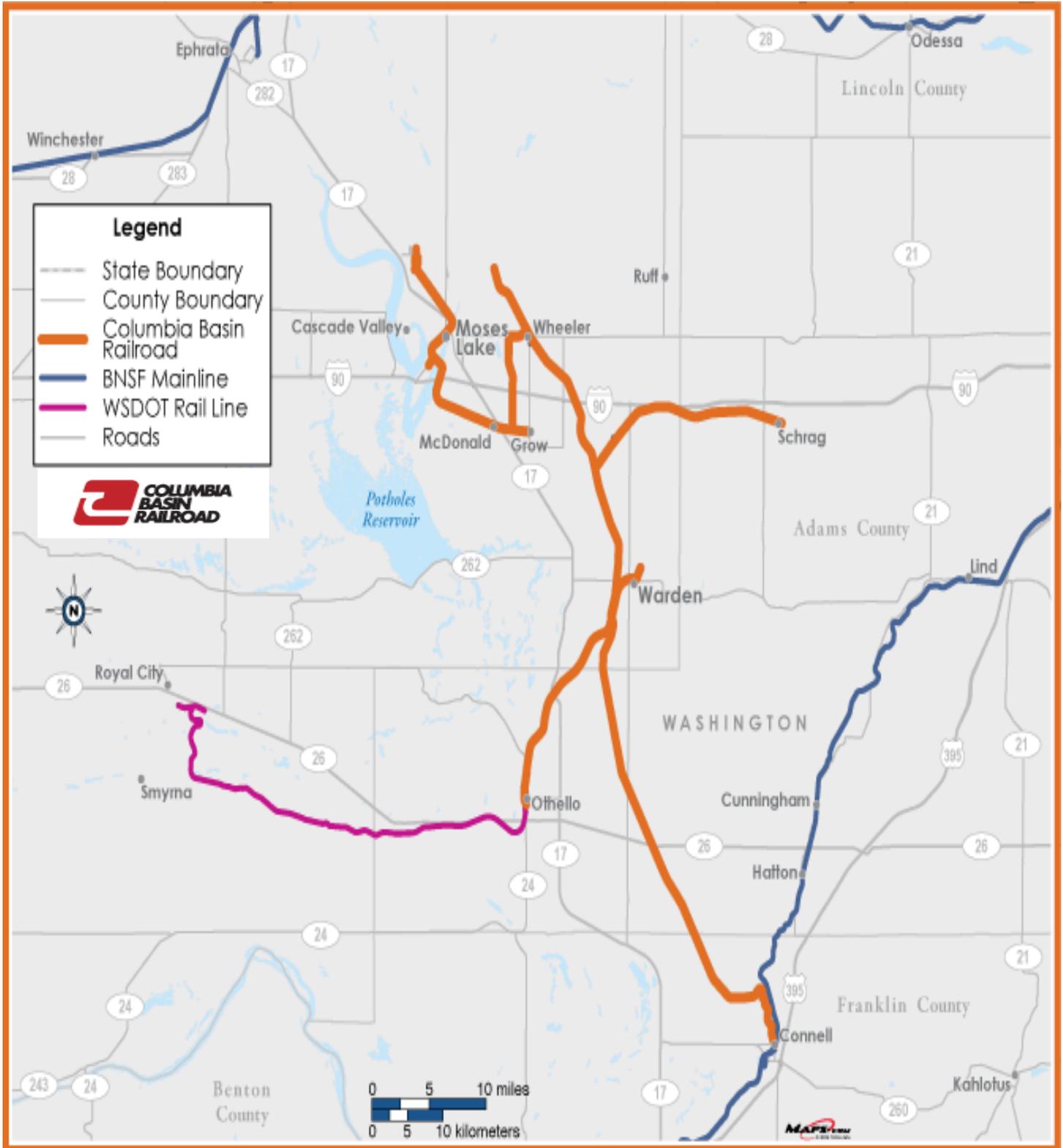
# KANSAS CITY WEST BOTTOMS RAILROAD



# CENTRAL WASHINGTON RAILROAD



# COLUMBIA BASIN RAILROAD



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COLUMBIA BASIN RAILROAD COMPANY, LLC

---

**EXHIBIT B**

**UNIT PURCHASE AGREEMENT – PUBLIC (REDACTED)<sup>7</sup>**

<sup>7</sup> The attached public version of the Unit Purchase Agreement omits entirely various schedules to the agreement that the parties to the transaction have determined in good faith are commercially-sensitive in their entirety, rather than to supply dozens of pages of wholly-blacked out content. All of these same schedules are provided under seal (subject to the concurrently-filed motion for protective order) in their entirety in the Highly Confidential version of this Exhibit B.

**UNIT PURCHASE AGREEMENT**

**by and between**

**Jaguar Rail Holdings, LLC**

**and**

**CBRW Holdings, Inc.  
CWA Holdings, Inc.  
PacStan Holdings, Inc.**

**and**

**\_\_\_\_\_**,

**as the Shareholders**

**and**

**\_\_\_\_\_**,

**Jointly as the Seller Representative**

**dated as of**

**\_\_\_\_\_**

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## UNIT PURCHASE AGREEMENT

This Unit Purchase Agreement (this “**Agreement**”) dated as of June 27, 2025 (the “**Effective Date**”), is entered into by and among Jaguar Rail Holdings, LLC, a Delaware limited liability company (“**Buyer**”), CBRW Holdings, Inc., a Washington corporation (“**CBRW Holdings**”), CWA Holdings, Inc., a Washington corporation (“**CWA Holdings**”), and PacStan Holdings, Inc., a Washington corporation (“**PacStan Holdings**” and collectively with CBRW Holdings and CWA Holdings, the “**Sellers**” and each individually a “**Seller**”), [REDACTED] the “**Shareholders**”, and together with the Sellers, the “**Seller Parties**” and each individually, a “**Seller Party**”), and [REDACTED], jointly and solely acting as the representative of the Sellers in their limited capacity as the “**Seller Representative**” under this Agreement.

### RECITALS

**WHEREAS**, as of the Effective Date hereof, the Shareholders own all of the issued and outstanding Equity Interests of Columbia Basin Railroad Company, Inc., a Washington corporation (“**CBRW**”), Central Washington Railroad Company, a Washington corporation (“**CWA**”), and Pacific Standard Corporation, a Washington corporation (“**PacStan**”), as set forth in **Exhibit C-1** attached hereto;

**WHEREAS**, CBRW and CWA directly operate railroading businesses in Central Washington (the “**Railroading Business**”);

**WHEREAS**, PacStan directly operates a railroad administrative services business that supports the Railroading Business (the “**Admin. Support Business**”);

**WHEREAS**, CBRW, CWA, and PacStan collectively comprise the “**Target Companies**” and each individually a “**Target Company**”;

**WHEREAS**, the Railroading Business and the Admin. Support Business, each as currently conducted, collectively comprise the “**Business**”;

**WHEREAS**, as a condition precedent to the transactions contemplated in this Agreement (collectively, the “**Transaction**”) and in order to prepare the Business and the Target Companies for an investment by Buyer, the Seller Parties will cause to be conducted certain restructuring and reorganization transactions which are collectively referred to herein as the “**Pre-Closing Restructuring**,” which transactions will be conducted in accordance with the terms and subject to the conditions set forth in this Agreement;

**WHEREAS**, following the completion of the Pre-Closing Restructuring, (a) CBRW Holdings shall own 100% of the issued and outstanding Equity Interests of CBRW (the “**CBRW Equity Interests**”), (b) CWA Holdings shall own 100% of the issued and outstanding Equity Interests of CWA (the “**CWA Equity Interests**”), and (c) PacStan Holdings shall own 100% of the issued and outstanding Equity Interests of PacStan (the “**PacStan Equity Interests**”);

**WHEREAS**, subject to the terms and conditions set forth herein, Sellers desire to sell to Buyer, and Buyer desires to purchase from the Sellers, 100% percent of all issued and outstanding CBRW Equity Interests, CWA Equity Interests, and PacStan Equity Interests in existence at the time of Closing (collectively, the “**Purchased Equity Interests**”); and

**WHEREAS**, as a result of the transactions described above, each Target Company will be a wholly-owned subsidiary of Buyer.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
DEFINED TERMS AND CONSTRUCTION**

**Section 1.01 Defined Terms.** Except as otherwise provided in this Agreement, capitalized terms used in this Agreement have the meanings given in Exhibit A.

**Section 1.02 Construction.** For purposes of this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedule, and Exhibits mean the Articles and Sections of, and Disclosure Schedule and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedule and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 1.03 Recitals.** Each party acknowledges and agrees that the transactions, statements, and definitions set forth in the Recitals to this Agreement form a material part of the contractual understanding between the parties and that as such, the Recitals are expressly incorporated herein by this reference.

**ARTICLE II  
PURCHASE AND SALE**

**Section 2.01** [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

**Section 2.02 Purchase and Sale.** Subject to the terms and conditions set forth herein, at the Closing, Buyer shall acquire from Sellers, and Sellers shall sell and transfer to Buyer, all of Sellers’ right, title, and interest in and to the Purchased Equity Interests, free and clear of any Encumbrances.

**Section 2.03 Purchase Price; Estimated Purchase Price; Flow of Funds.**

(a) (i) The aggregate purchase price for Buyer's purchase of the Purchased Equity Interests under this Agreement is [REDACTED] (the "Purchase Price").

(ii) The Purchase Price will be an amount equal to [REDACTED]

(b) The Purchase Price will be apportioned between the Sellers as set forth and allocated on attached Schedule 6.02.

(c) At least *three (3) Business Days* prior to the Closing Date, the Seller Representative will deliver (or cause to be delivered) to the Buyer:

(i) A certified executed statement that sets forth the Sellers' good faith estimate and calculation of the following (the "**Estimated Closing Statement**"), along with all supporting documentation reasonably requested by the Buyer:

[REDACTED]

(d) The Estimated Purchase Price will be paid at Closing in accordance with Section 2.03(e).

(e) At least *three (3) Business Days* prior to the Closing Date, the Seller Representative will deliver to the Buyer a draft statement, and at least *two (2) Business Days* prior to the Closing Date, the Seller Representative will deliver to the Buyer a certified executed statement, that sets forth Sellers' good faith estimate, calculation, and register of all payments and transfers to be made at Closing from the Base

Price funds, along with all required payment instructions (the “Flow of Funds”), including without limitation:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

(f) At the Closing, the Buyer shall make all payments required under Section 2.03(e) in accordance with the Flow of Funds.

**Section 2.04 Purchase Price Adjustment.**

(a) Final Closing Statement. Within *ninety (90) days* after the Closing Date, the Buyer (or a certified public accountant on behalf of the Buyer) shall prepare and deliver to the Sellers:

(i) a certified executed statement setting forth the Buyer’s calculation of the following (the “**Final Closing Statement**”), along with all supporting documentation reasonably requested by the Seller Representative:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



Closing Statement and the Statement of Objections, respectively. The fees and expenses of the Independent Accountant shall be paid by Sellers, on the one hand, and by the Buyer, on the other hand, based upon the percentage that the aggregate amount actually contested but not awarded to Sellers or the Buyer, respectively, bears to the aggregate amount actually contested by the Seller Representative and the Buyer. The Independent Accountant shall make a determination as soon as practicable within *thirty (30) days* (or such other time as the Buyer and the Seller Representative shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Final Closing Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(iii) As used herein, the terms “**Final Closing Figures**” means respectively, [REDACTED]

(iv) Payments of Post-Closing Adjustment. Upon determination of the Final Closing Figures, the Estimated Purchase Price determined at Closing under Section 2.03(c) shall be further adjusted and recalculated using the Final Closing Figures (the “**Adjusted Purchase Price**”). If the Adjusted Purchase Price exceeds the Estimated Purchase Price, the Purchase Price shall be increased by the amount by which the Adjusted Purchase Price exceeds the Estimated Purchase Price. If the Adjusted Purchase Price is less than the Estimated Purchase Price, the Purchase Price shall be decreased by the amount by which the Adjusted Purchase Price is less than the Estimated Purchase Price. Any such increase or decrease to the Purchase Price will constitute a “**Post-Closing Adjustment**”.

(d) Payment of Adjustment. Any Post-Closing Adjustment in accordance with Section 2.04(c)(iv), will be paid by the Buyer or the Sellers, as applicable, in cash within *five (5) Business Days* of determination of the Final Closing Figures, (i) if to Sellers, by wire transfer of immediately available funds by Buyer to the account(s) designated in the Flow of Funds, allocated among the Sellers as set forth under Section 2.03(b); or (ii) if to Buyer, (A) first by wire transfer of immediately available funds from the Working Capital Escrow Amount to the account designated in writing for Buyer in the Escrow Agreement (which Buyer and the Seller Representative will jointly instruct the Escrow Agent to complete), and (B) if the amount of the Post-Closing Adjustment exceeds the amount transferred to Buyer from the Working Capital Escrow Amount pursuant to Section 2.04(d)(ii)(A), then the Seller Parties, on a joint and several basis, shall be responsible for paying such difference to Buyer by wire transfer of immediately available funds to the account designated in writing by Buyer to the Seller Parties.

(e) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.04(d) shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 2.05 Closing.** Subject to the terms and conditions of this Agreement, the transactions contemplated in Section 2.02 shall take place at a closing (the “**Closing**”) to be held no later than *five (5) Business Days* after the last of the conditions to Closing set forth in Article VIII have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) or on such other date as the Seller Representative and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the “**Closing Date**”). The Closing shall take place remotely via the electronic exchange of documents and funds.

**Section 2.06 Closing Deliverables.**

(a) **Seller Parties' Closing Deliverables.** At or prior to Closing, Sellers will cause the Seller Parties to have executed (if applicable) and delivered to the Buyer each of the following items:

(i) the certified Flow of Funds, in accordance with Section 2.03(e);

(ii) the certified Estimated Closing Statement, in accordance with Section 2.03(c)(i);

(iii) all approvals, consents, authorizations, and waivers that are, or are required to be, listed on **Section 3.04 of the Disclosure Schedule**;

(iv) the Assignments of Membership Interests attached as **Exhibits D-1, D-2, and D-3** (collectively, the "**Membership Interests Assignments**") for Sellers' transfer of ownership of the Purchased Equity Interests to Buyer free and clear of any Encumbrance;

(v) the Washington State change in controlling interest real estate excise tax affidavits attached hereto as **Exhibits E-1 and E-2** (the "**Change in Controlling Interest REETAs**");

(vi) the Escrow Agreement attached as **Exhibit F** (the "**Escrow Agreement**") by and between the Sellers, the Seller Representative, Buyer, and the Escrow Agent for administration of the [REDACTED];

(vii) a good standing certificate or certificate of existence for each Target Company from the Secretary of State or similar Governmental Authority of the jurisdictions under the Laws in which such entity is organized or registered to do business, obtained within *thirty (30) days* of the Closing Date;

(viii) a valid IRS Form W-9, Request for Taxpayer Identification Number and Certification from each Seller;

(ix) at least *two (2) Business Days* prior to the Closing Date, a copy of all lender issued payoff letters representing the Closing Indebtedness (the "**Payoff Letters**") (if any) and a closing invoice for payment of all Seller Transaction Expenses, and all documentation necessary or desirable to obtain releases of all Encumbrances related to the applicable Closing Indebtedness, including appropriate UCC termination statements, in each case in form and substance reasonably satisfactory to Buyer;

(x) the Resignation Notice attached as **Exhibit G** (the "**Resignation Notice**");

(xi) [REDACTED]

(xii) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that each Seller is not a foreign person within the meaning of Section 1445 of the Code;

(xiii) the resolutions required under Section 5.09(b) to adopt the 401(k) Plan Amendment;

(xiv) [REDACTED];

(xv) those certain deliverables set forth on Schedule 2.06, in each case in form and substance reasonably satisfactory to Buyer; and

(xvi) the remaining Transaction Documents and other such documents or instruments as Buyer reasonably requests and that are reasonably necessary to consummate the Transactions contemplated by this Agreement.

(b) Buyer's Closing Deliverables. At or prior to Closing, the Buyer will have executed (if applicable) and delivered to the Sellers each of the following items:

(i) the Closing Payment and all other payments and transfers on behalf of Sellers set forth in the Flow of Funds to cover the Estimated Purchase Price and to pay all of Buyer's Closing costs;

(ii) the Change in Controlling Interest REETAs;

(iii) the Escrow Agreement;

(iv) a good standing certificate or certificate of existence for each Buyer from the Secretary of State or similar Governmental Authority of the jurisdictions under the Laws in which such entity is organized or registered to do business obtained within *thirty (30) days* of the Closing Date; and

(v) the remaining Transaction Documents and such other documents or instruments as Sellers reasonably request and that are reasonably necessary to consummate the Transactions contemplated by this Agreement.

#### **Section 2.07 Working Capital Escrow.**

(a) As security for any amount the Sellers may owe to Buyer pursuant to Section 2.04(d), an amount in cash equal to [REDACTED] of the Working Capital Target (the "**Working Capital Escrow Amount**") shall be deposited in a mutually agreeable investment account established and administered by the Escrow Agent under the Escrow Agreement (the "**Escrow Account**").

(b) Within *five (5) Business Days* of determination of the Final Closing Figures, Buyer and the Seller Representative will jointly instruct the Escrow Agent to release to the Sellers an amount equal to the remaining balance of the Working Capital Escrow Amount *plus* any interest or other earnings accrued thereon *minus* any amount paid to Buyer under Section 2.04(d).

**Section 2.08 Tax Treatment of Indemnification Payments.** All indemnification payments made pursuant to ARTICLE VI or ARTICLE VII shall be treated by the parties to this Agreement as an adjustment to the Purchase Price for Tax and accounting purposes, unless otherwise required by Law.

**Section 2.09 Tax Withholding.** Buyer shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement any amounts Buyer is required to deduct and withhold under applicable Law; provided, however, any such withholding must be promptly remitted by Buyer to the applicable Governmental Authority charged with the collection of such amount withheld. Other than with respect to any payments that are compensatory in nature or subject to backup withholding, Buyer shall provide the applicable Seller with prior written notice of its intent to withhold under this Section and a written explanation substantiating the requirement to deduct or withhold at least seven (7) days prior to such withholding, and the parties shall use commercially reasonable efforts to cooperate to mitigate or eliminate any such withholding. To the extent such amounts are so deducted or withheld, such amounts shall be

treated for all purposes as having been paid to the Seller to whom such amounts would otherwise have been paid absent such deduction or withholding.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES**

Each Seller Party, jointly and severally, represents and warrants to the Buyer that the statements, representations and warranties contained in this ARTICLE III are true and correct as of the Effective Date and as of the Closing.

**Section 3.01 Organization and Authority of the Sellers and the Target Companies.**

(a) Each Seller is a corporation duly organized and validly existing under the Laws of the State of Washington. Each Seller has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which such Seller is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Seller Party of this Agreement and any other Transaction Document to which such Seller Party is a party, the performance by such Seller Party of its obligations hereunder and thereunder, and the consummation by such Seller Party of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of such Seller Party. This Agreement and each other Transaction Document to which a Seller Party is a party has been duly executed and delivered by such Seller Party, and (assuming due authorization, execution, and delivery by the other parties) this Agreement and each other Transaction Document to which such Seller Party is a party constitutes a legal, valid, and binding obligation of such Seller Party enforceable against such Seller Party in accordance with its terms.

(b) [REDACTED]

(c) Each Target Company has full corporate or limited liability company, as applicable, power and authority to enter into the Transaction Documents to which it is a party, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Target Company of the Transaction Documents to which it is a party, the performance of its obligations thereunder, and the consummation by each Target Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate and limited liability company, as applicable, action on the part of such Person. Each Transaction Document to which a Target Company is a party has been duly executed and delivered by such Target Company (assuming due authorization, execution and delivery by each other party thereto) and constitutes a legal and binding obligation of such Target Company enforceable against it in accordance with its terms. All corporate or limited liability, as applicable, company actions taken by each Target Company in connection with this Agreement, the other Transaction Documents to which it is a party, and the transactions contemplated hereby and thereby has been duly authorized.

### **Section 3.02 Capitalization.**

(a) **Exhibit C-1 (for the Target Companies)** attached hereto and incorporated herein lists, as of the Effective Date hereof and as of the Closing Date [REDACTED], the record and beneficial owners of all the issued and outstanding Equity Interests of each Target Company, including the ownership percentages for each, and class of Equity Interest for each. **Exhibit C-2 (for the Sellers)** attached hereto and incorporated herein lists, as of the Closing Date [REDACTED], the record and beneficial owners of all the issued and outstanding Equity Interests of each Seller, including the ownership percentages for each, and class of Equity Interest for each. As of the Effective Date hereof, the Shareholders are the record and beneficial owner of and have good and valid title to the Purchased Equity Interests held by such Shareholder described on **Exhibit C-1**, free and clear of all Encumbrances. At Closing [REDACTED], each Seller will be the record and beneficial owner of and have good and valid title to the Purchased Equity Interests held by such Seller described on **Exhibit C-1**, free and clear of all Encumbrances. As a result of the Transactions contemplated by this Agreement and the other Transaction Documents, Buyer is acquiring good and valid title to the Purchased Equity Interests, free and clear of all Encumbrances. The Purchased Equity Interests collectively represent all of the issued and outstanding equity of the Target Companies.

(b) All outstanding Equity Interests for each Target Company have been, where applicable, duly authorized and are validly issued, fully-paid, and non-assessable.

(c) All Equity Interests of each Target Company were issued in compliance with applicable Laws. None of the foregoing Equity Interests were issued in violation of the Organizational Documents of such entity or any other agreement, arrangement, or commitment to which any such entity or Seller is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

(d) There are no outstanding or authorized options, warrants, convertible securities, or other rights, Contracts, arrangements, or commitments of any character relating to any Equity Interests in any Target Company, obligating any such entity, or any owner of such entity, to issue or sell any Equity Interests or any other interest in any such entity.

(e) Seller Parties have Made Available to the Buyer complete and current copies of the Organizational Documents for each Target Company and there are no voting trusts, proxies, or other agreements or understandings in effect with respect to the voting or transfer of any Equity Interests of any of the Target Companies.

(f) No Target Company nor any Seller Party has made any commitment or contractual arrangement, oral or written, that would constitute a joint venture transaction or similar arrangement, or which would otherwise entitle any other Person to an interest in the profits or losses of the Business.

**Section 3.03 No Subsidiaries.** No Target Company owns, or has any interest in any Equity Interests, or other ownership interest in any Person.

### **Section 3.04 No Conflicts; Consents.**

(a) The execution, delivery, and performance by each Seller Party and each Target Company of this Agreement and the other Transaction Documents to which each of them is a party, and the consummation of the transactions contemplated hereby and thereby (including the Pre-Closing Restructuring), do not: (i) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of any Target Company or Seller Party; (ii) conflict with or result in a violation or breach of any provision of any Law, Governmental Order, or Permit applicable to any Seller

Party or any Target Company; (iii) except as set forth in **Section 3.04(x) of the Disclosure Schedule**, require the consent, notice, or other action by any Person under, or conflict with, or result in a violation, or a breach of, or constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel any Contract to which any Target Company is a party, by which any such entity is bound or to which any of its respective properties and assets are subject; or (iv) result in the creation or imposition of any Encumbrance on any assets, rights, or properties of, or Equity Interests in, any Target Company. Except as set forth in **Section 3.04(v) of the Disclosure Schedule**, no consent, approval, Permit, Governmental Order, declaration, or filing with, or notice to, any Governmental Authority is required by or with respect to any Seller Party or any Target Company in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

(b) There is no Action pending or, to Sellers' Knowledge, threatened against or by, any Seller Party or any Target Company, (i) relating to the Purchased Equity Interests, or (ii) that challenges or seeks to prevent, enjoin, or otherwise delay the Transactions contemplated by this Agreement. To Sellers' Knowledge, no event has occurred or circumstance exists that may give rise to, or serve as a basis for, any such Action.

**Section 3.05 Financial Statements.**

(a) **Section 3.05(a) of the Disclosure Schedule** contains complete and accurate copies of (i) the internally prepared balance sheets and income statements of each of the Target Companies as of December 31st for each of the fiscal years 2022, 2023, and 2024 (the "**Annual Financial Statements**"), and (ii) the internally prepared balance sheets and income statements of each of the Target Companies as of **April 30, 2025** (the "**Interim Financial Statements**" and, together with the Annual Financial Statements, the "**Financial Statements**").

[REDACTED]

(c) The internally prepared balance sheets of the Target Companies as of December 31, 2024, are referred to herein as the "**Balance Sheets**" and the date thereof as the "**Balance Sheet Date**." The balance sheet of the Target Companies as of **April 30, 2025**, is referred to herein as the "**Interim Balance Sheets**" and the date thereof as the "**Interim Balance Sheet Date**."

**Section 3.06 Undisclosed Liabilities.** Except as set forth in **Section 3.06 of the Disclosure Schedule**, no Target Company has any liabilities, obligations, or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except Liabilities (a) which are adequately reflected or specifically reserved against in the Interim Balance Sheets as of the Interim Balance Sheet Date, (b) future performance Liabilities under Contracts that are disclosed in the Disclosure Schedule (none of which is a Liability resulting from, arising out of, relating to, in the nature of, or caused by any breach of Contract, breach of warranty, tort, infringement or violation of Law); (c) that have been paid off in full prior to or at the Closing,

or (d) which have been incurred in the Ordinary Course of Business since the Interim Balance Sheet Date that are not individually, or in the aggregate, material in amount.

**Section 3.07 Absence of Certain Changes, Events and Conditions.** Since January 1, 2025, and except as set forth on Section 3.07 of the Disclosure Schedule, there has not been, with respect to any Target Company, any:

(a) event, occurrence or development that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) material changes to Business operations, including revisions to, or renegotiation of, or changes to any Material Contract or material changes to Target Company policies or procedures;

(c) amendment of the Organizational Documents [REDACTED]

(d) split, combination, or reclassification of any Equity Interests [REDACTED]

(e) issuance, sale, or other disposition of, or creation of any Encumbrance on, any Equity Interests in, or grant of any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange or exercise) any such Equity Interests [REDACTED]

(f) change in any method of accounting, accounting practice, auditing practice, or tax reporting practice, except as required by GAAP or as disclosed in Section 3.05(b) of the Disclosure Schedule or the notes to the Financial Statements;

(g) entry into, acceleration, termination, forfeiture, extension, material modification to or cancellation, or allowance of a lapse of the terms of, any Contract that would constitute a Material Contract;

(h) incurrence, assumption, or guarantee of any Indebtedness;

(i) transfer, assignment, sale, or other disposition of any of the assets shown or reflected in the Interim Balance Sheet or cancellation of any debts or entitlements, in each case, outside the Ordinary Course of Business [REDACTED]

(j) transfer, assignment, or grant of any license or sublicense of any material rights under or with respect to any Business Intellectual Property;

(k) damage, destruction, or loss (whether or not covered by insurance) to its property in excess of [REDACTED]

(l) capital investment in, or any loan to, any other Person;

(m) capital expenditures in excess of [REDACTED] in the aggregate;

(n) imposition of any Encumbrance upon any tangible or intangible property or asset, other than in the Ordinary Course of Business;

(o) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension, or other compensation or benefits in respect of its current or former employees, officers,

managers, independent contractors, or consultants, (ii) change in the terms of employment for any employee resulting in an annual cost increase of more than [REDACTED], (iii) termination of any employee with total annual compensation exceeding [REDACTED], (iv) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, manager, independent contractor, or consultant; or (v) adopted, amended, modified, or terminated any Benefit Plan;

(p) adoption, modification or termination of any: (i) employment, severance, retention, or other agreement with any current or former employee, officer, manager, independent contractor or consultant in excess of [REDACTED], or (ii) Benefit Plan;

(q) (i) loan to (or forgiveness of any loan to), or (ii) entry into any other transaction [REDACTED] with, any current or former stockholder, member, manager, officer or employee;

(r) entry into a business other than the Business;

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

(t) purchase, lease or other acquisition of the right to own, use or lease any personal property or tangible assets for an amount in excess of [REDACTED], individually (in the case of a lease, per annum) or [REDACTED] in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the Ordinary Course of Business;

(u) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets, stock or other Equity Interests of any business, or any Person, or any division thereof (except in connection with the Pre-Closing Restructuring);

(v) [REDACTED], adoption or change of any election, change of any accounting period, adoption or change of any accounting method, filing of any amended Tax Return, or entry into any closing agreement, settlement or compromise of any Tax claim or assessment relating to any Target Company, surrender of any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to any of the Target Company, or the taking of any other similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, adoption, change, amendment, agreement, settlement, surrender consent or other action would have the effect of increasing the Tax liability of any Target Company for any period ending after the Closing Date, or decreasing any Tax attribute of any Target Company existing on the Closing Date;

(w) commencement, initiation, entry into any settlement or compromise of, or offer or proposal to settle or compromise any Action involving, by or against any Target Company; or

(x) agree or consent, in a binding arrangement, to do any of the foregoing.

### **Section 3.08 Material Contracts.**

(a) **Section 3.08 of the Disclosure Schedule** lists each of the following Contracts to which any Target Company is a party or by which any Target Company's assets are bound (such Contracts, together with all Business IP Contracts, and other Contracts disclosed in **Section 3.10 of the Disclosure**

**Schedule and Section 3.09 of the Disclosure Schedule**, collectively the “**Material Contracts**”), setting forth for each such Material Contract, the: (1) title, (2) parties, and (3) date to which the Contract pertains:

(i) all Contracts pursuant to which any Target Company paid or received aggregate consideration in excess of [REDACTED] in 2023 or 2024 and which, in each case, cannot be cancelled by such Target Company without penalty or without more than [REDACTED] notice;

(ii) all Contracts requiring payments to or by any Target Company of [REDACTED] or more per annum after the Effective Date hereof;

(iii) all Contracts with any Material Customers or Material Suppliers;

(iv) all Contracts that require any Target Company to purchase its total requirements of any product or service from a third party or that contain minimum purchase obligations or “take or pay” provisions;

(v) all Contracts that provide for the indemnification or assumption of Liabilities by any Target Company of any Person with respect to any Tax or environmental Liabilities of any Person;

(vi) all Contracts (except those Contracts entered into in connection with the Pre-Closing Restructuring) that relate to the acquisition or disposition of any business, a material amount of equity or assets of any other Person, or any real property (whether by merger, sale of Equity Interests, sale of assets, or otherwise);

(vii) [REDACTED]

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

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

(x) all railroad transportation services Contracts and railroad ancillary services Contracts (including, but not limited to car switching Contracts, car hire Contracts, rail car storage Contracts, industry or side track Contracts, and railroad right of way management and marketing Contracts);

(xi) all employment Contracts;

(xii) all Contracts with independent contractors or consultants who are individuals (as opposed to entities);

(xiii) all Contracts with any Governmental Authority;

(xiv) all Contracts which grant any third party a right to use any Business Owned Intellectual Property;

(xv) all Contracts that provide for any joint venture or partnership;

(xvi) all Contracts between or among a Target Company, on the one hand, and any Seller Party or Affiliate of any Seller Party, including any entity owned (directly or indirectly) or controlled by any Seller Party, on the other hand [REDACTED]

(xvii) all Contracts (A) pursuant to which a Target Company owes Indebtedness, or (B) that create an Encumbrance on any asset of any Target Company arising in connection with Indebtedness (other than Permitted Encumbrances), including any security agreement, mortgage or deed of trust;

(xviii) all Contracts containing exclusivity restrictions or other limitations on the ability of any Target Company to contract or conduct business with any third-party, or in any market or geographic region, and any Contract imposing such restrictions on any other contract party for the benefit of any Target Company;

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

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

(xxi) all Contracts pursuant to which any Target Company has granted any exclusive agency, marketing, sales representative relationship, franchising, consignment or distribution right to any third party;

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

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

(xxiv) all Contracts that constitute guaranty agreements or similar arrangements where any Target Company agrees to be responsible for the payment of any Indebtedness of any other Person;

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

(xxvi) any (A) settlement, conciliation or similar Contract with a Governmental Authority or any other Person entered into during the past five (5) years or pursuant to which any Target Company has any unsatisfied or continuing obligations, (B) Contract related to any matter that, if made available to and known by the public, would reasonably be expected to result in public disgrace or disrepute, contempt, scandal, ridicule or substantial harm to the reputation or public standing of any Target Company, or (C) Contract relating to the settlement of any allegation of sexual harassment or sexual discrimination;

(xxvii) all collective bargaining agreements or Contracts with any labor organization, union or association; and

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

(b) Each Material Contract is valid and binding on the parties thereto in accordance with its terms and is in full force and effect. Neither the Target Company party thereto nor, to Sellers’ Knowledge, any other party thereto is in material breach of or default under (or is alleged to be in material breach of or

default under), or has provided or received any notice of any intention to terminate, any Material Contract. To Sellers' Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder, except as would not reasonably be expected to be material to the Target Company. No Target Company has any Liability for any breach or default of any Material Contract. Complete and correct copies of each Material Contract have been Made Available to the Buyer. No Seller is party to any Material Contract, except the Transaction Documents.

### **Section 3.09 Personal Property.**

(a) Each Target Company has good and valid title to, or a valid leasehold interest in, or a valid operating right with respect to, all personal property and other assets [REDACTED] used by it or reflected in the Interim Financial Statements or acquired after the Interim Balance Sheet Date (collectively, the "Business Assets") free and clear of Encumbrances (other than Permitted Encumbrances).

(b) **Section 3.09(b) of the Disclosure Schedule** contains an accurate and complete list and description of all leased equipment or other personal property, including locomotives and railcars, currently leased by any Target Company or otherwise currently used in the Business. True and complete copies of all such leases, including any amendments thereto, have been Made Available to Buyer. All such leases are in full force and effect with respect to each Target Company, and to Sellers' Knowledge with respect to each counterparty. All such leases constitute legal, valid and binding obligations of the respective Target Company party thereto and, to Sellers' Knowledge, the other parties thereto, and are enforceable against such Target Company, and to Sellers' Knowledge, the other parties thereto, in accordance with their terms, except as stated on **Section 3.09(b) of the Disclosure Schedule**. No Target Company is in default in any material respect (and no event has occurred which, with the passage of time or the giving of notice or both, would reasonably be expected to constitute a material default) under any such lease. Except as described on **Section 3.09(b) of the Disclosure Schedule** and to the Sellers' Knowledge, none of the parties contracting with any Company is in default in any material respect under any such lease. No Target Company waived any material provision of any such lease.

(c) **Section 3.09(c) of the Disclosure Schedule** contains an accurate and complete list and description of Capital Equipment of each Target Company. Except as set forth on **Section 3.09(c) of the Disclosure Schedule**, each Target Company has good and merchantable title to all of its Capital Equipment, including all locomotives, railcars, vehicles, Track and railcar repair equipment, radios, and other equipment, and all of its fixtures and tangible personal property which such Target Company uses, free and clear of all Encumbrances (other than Permitted Encumbrances).

(d) **Section 3.09(d) of the Disclosure Schedule** includes a complete list of all railcars owned by a Person other than any Target Company (except for railcars interchanged in the Ordinary Course of Business) that are stored by any such Person on the property of any Target Company as of the Interim Balance Sheet Date.

### **Section 3.10 Real Property.**

(a) **Real Property.**

(i) **Section 3.10(a)(i) of the Disclosure Schedule** lists all Owned-R/W Real Property as of the Effective Date and the Closing Date. Sellers have Made Available true, complete, and correct copies of the deeds and other instruments in which the Target Companies acquired the Target Companies'

ownership and/or usage and access rights in the Owned-R/W Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Sellers Parties or the Target Companies and related to the Owned-R/W Real Property.

(ii) **Section 3.10(a)(ii) of the Disclosure Schedule** lists all Leased Real Property that is leased by any Target Company (as lessee or sublessee) from any third-party (as lessor or sublessor) as of the Effective Date and the Closing Date and the corresponding written lease (and all amendments, extensions, renewals, guaranties, and subordination, nondisturbance, and attornment agreements (i.e., SNDAs) with respect thereto) for each such leasing arrangement (each a “**Target Company as Lessee Lease**” and collectively, the “**Target Company as Lessee Leases**”). Sellers have Made Available to Buyer true, complete, and correct copies of all Target Company as Lessee Leases.

(iii) **Section 3.10(a)(iii) of the Disclosure Schedule** lists all Leased Real Property that is leased by any third-party (as lessee or sublessee) from any Target Company (as lessor or sublessor) as of the Effective Date and the corresponding written lease (and all amendments, extensions, renewals, guaranties, and subordination, nondisturbance, and attornment agreements (i.e., SNDAs) with respect thereto) for each such leasing arrangement (each a “**Target Company as Lessor Lease**” and collectively, the “**Target Company as Lessor Leases**”). Sellers have Made Available to Buyer true, complete, and correct copies of all Target Company as Lessor Leases.

(iv) **Section 3.10(a)(iv) of the Disclosure Schedule** lists all Operating Agreement Real Property as of the Effective Date and the Closing Date and the corresponding Operating Agreement. Sellers have Made Available to Buyer true, complete, and correct copies of all Operating Agreements.

(v)

[REDACTED]

(vi) **Section 3.10(a)(vi) of the Disclosure Schedule** lists all active and unexpired ITAs that exist as of the Effective Date. Sellers have Made Available to Buyer true, complete, and correct copies of all ITAs.

(vii)

[REDACTED]

(viii) Each Target Company is a “United States person” (as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended).

(ix) [REDACTED], (i) the Target Companies own and have good and valid title to, or have a good and valid leasehold, easement, right of way, trackage right, license, or other interest in, or otherwise have a valid right of possession, use, or access to, all of the Real Property; (ii) no written claim, or other claim, has been made against any of the Target Company’s interest in the Real Property during the period of such Target Company’s ownership thereof, and (iii) all Real Property is free and clear of all Encumbrances, except for Permitted Real Property Encumbrances.

[REDACTED]

(b) Owned-R/W Real Property.

(i) All real estate Taxes and assessments, if any, relating to the Owned-R/W Real Property, that are due and payable by any of the Target Companies have been paid in full.

(ii) Target Companies (A) have not submitted an application for the creation of any special taxing district affecting the Owned-R/W Real Property, (B) have not received any notice that any Governmental Authority intends to impose or increase any special or other assessment against the Owned-R/W Real Property or any part thereof, including assessments attributable to revaluations of the Owned-R/W Real Property. Further, there is no ongoing appeal with respect to Taxes or special assessments related to the Owned-R/W Real Property for any year, and/or any consultants engaged to perform work with respect to appeals of Taxes or special assessments related to the Owned-R/W Real Property have been paid in full.

(iii) There are no federal or state tax liens now pending or threatened which may affect the Target Companies' interests in the Owned-R/W Real Property or otherwise affect any Owned-R/W Real Property after Closing.

(iv) No Target Company has entered into any currently effective agreement to option, sell, assign, dispose of, or otherwise transfer all or any portion of its interest in and to the Owned-R/W Real Property.

(v) No Target Company is in default under any loan documents secured by any mortgage or security interest on the Owned-R/W Real Property, nor (i) has any event or condition occurred which, after notice and/or opportunity to cure, would result in a Target Company default thereunder, or (ii) to Seller's Knowledge, has any such default been threatened. Similarly, no Target Company has received any notice of default under any such loan documents. The loan documents are pre-payable on a voluntary basis by the respective Target Company at Closing, and any prepayment penalties related to such prepayments have been paid in full by such Target Company on or prior to the Closing Date.

(vi) [REDACTED] neither the Target Companies nor the Seller Parties have (i) received written notice from any Governmental Authority of any violation by any Target Company or the Owned-R/W Real Property of any Law affecting the Owned-R/W Real Property or its use including any Environmental Law or regulation within the ten (10) year period preceding the Effective Date, nor any written notice that the Owned-R/W Real Property is in violation of any applicable building or zoning code or ordinance or Environmental Law or regulation within the ten (10) year period preceding the Effective Date, except for any such matters which have been previously cured by such Target Company, and (ii) to Seller's Knowledge, no such violation has been threatened. All past noncompliance by any Target Company with any Environmental Laws has been resolved without ongoing material obligations or costs to the Target Company.

(vii) No condemnation, eminent domain or similar Action, or private purchase in lieu of such a proceeding, with respect to any of the Owned-R/W Real Property is pending, or, to Sellers' Knowledge, threatened in writing. Neither the Target Companies nor any Seller has received notice from any Governmental Authority of any such Action, and, to Sellers' Knowledge, no such Action is threatened.

(viii) The Target Companies and Seller Parties are each a "United States person" (as defined in Section 7701(a)(30) of the Code).

(ix) The Target Companies have not pledged, mortgaged, deeded in trust, or otherwise hypothecated any Owned-R/W Real Property or any interest therein.

(c) Leased Real Property.

(i) (x) Each Lease is valid, binding, enforceable and in full force and effect, and has not been assigned or transferred to any third party, and (y) the Target Companies enjoy peaceful and undisturbed possession of the Leased Real Property for which a Target Company is lessee or sublessee that is not leased to a third-party by the Target Company as a sublessor in accordance with the terms of the Target Company as Lessee Leases.

(ii) [REDACTED] the Target Companies are not in breach or default under any Lease, and no event has occurred or circumstance exists which (with or without the delivery of notice, passage of time, or both) would constitute such a breach or default or otherwise permit the termination of any Lease by the other party to the Lease, and the Target Companies have paid all rent due and payable under the Leases owed by the Target Companies, and no rents have been prepaid by the Target Companies except for the current month.

(iii) [REDACTED] (A) neither the Target Companies nor the Seller Parties have received nor given any notice of any default or event that (with or without the delivery of notice, passage of time, or both) would constitute a default by the Target Companies or any other party under any of the Leases, (B) to Sellers' Knowledge, no other party is in default thereof, and (C) no party to any Lease has exercised any termination rights with respect thereto, and, to Sellers' Knowledge, no such termination has been threatened.

(iv) [REDACTED] neither the Target Companies nor the Seller Parties have (i) received written notice from any Governmental Authority of any violation by any Target Company or the Leased Real Property of any Law affecting the Leased Real Property or its use including any Environmental Law or regulation within the ten (10) year period preceding the Effective Date, nor any written notice that the Leased Real Property is in violation of any applicable building or zoning code or ordinance or Environmental Law or regulation within the ten (10) year period preceding the Effective Date, except for any such matters which have been previously cured by such Target

Company, and (ii) to Seller's Knowledge, no such violation has been threatened. All past noncompliance by any Target Company with any Environmental Laws has been resolved without ongoing material obligations or costs to the Target Company.

(v) The Target Companies have not pledged, mortgaged, deeded in trust, or otherwise hypothecated any Lease or Leased Real Property or any interest therein.

(vi) [REDACTED] no security deposit or portion thereof deposited with respect to any Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full.

(d) Operating Agreements.

(i) Each Operating Agreement is valid, binding, enforceable and in full force and effect, and the Target Companies enjoy peaceful and undisturbed use of the Operating Agreement Real Property in accordance with the terms of the Operating Agreements.

(ii) [REDACTED] the Target Companies are not in breach or default under any Operating Agreement, and no event has occurred or circumstance exists which (with or without the delivery of notice, passage of time or both) would constitute such a breach or default or otherwise permit the termination of any Operating Agreement by the other party to the Operating Agreement, and the Target Companies have paid all amounts due and payable under the Operating Agreements owed by the Target Companies, and no such amounts have been prepaid by the Target Companies except for the then current period.

(iii) [REDACTED], (A) neither the Target Companies nor the Seller Parties have received nor given any notice of any default or event that (with or without the delivery of notice, passage of time, or both) would constitute a default by the Target Companies or any other party under any Operating Agreement, (B) to Sellers' Knowledge, no other party is in default thereof, and (C) no party to any Operating Agreement has exercised any termination rights with respect thereto, and, to Sellers' Knowledge, no such termination has been threatened.

(iv) [REDACTED], neither the Target Companies nor the Seller Parties have (i) received written notice from any Governmental Authority of any violation by any Target Company or the Operating Agreement Real Property of any Law affecting the Operating Agreement Real Property or its use including any Environmental Law or regulation [REDACTED], nor any written notice that the Operating Agreement Real Property is in violation of any applicable building or zoning code or ordinance or Environmental Law or regulation [REDACTED] except for any such matters which have been previously cured by such Target Company, and [REDACTED]

(v) The Target Companies have not pledged, mortgaged, deeded in trust, or otherwise hypothecated any Operating Agreement or Operating Agreement Real Property or any interest therein.

(vi) Except as set forth in **Section 3.10(d)(vi) of the Disclosure Schedule**, no security deposit or portion thereof deposited with respect to any Operating Agreement has been applied in respect of a breach or default under such Operating Agreement which has not been redeposited in full.

(e) Real Property Licenses, ITAs, and Public Governmental Agreements.

(i) Each Real Property License, ITA, and Public Governmental Agreement is valid, binding, enforceable and in full force and effect.

(ii) The Target Companies are not in breach or default under any Real Property License, ITA, or Public Governmental Agreement, and no event has occurred or circumstance exists which (with or without the delivery of notice, passage of time or both) would constitute such a breach or default or otherwise permit the termination of any Real Property License, ITA, or Public Governmental Agreement by the other party to such agreements, and, to the extent applicable, the Target Companies have paid all amounts due and payable under any Real Property License, ITA, or Public Governmental Agreement owed by the Target Companies (if any), and no such amounts (if any) have been prepaid by the Target Companies except for the then current period.

(iii) [REDACTED]

(f) Zoning and Permit Compliance. All Target Company-owned improvements and infrastructure located on the Real Property and all Target Company Business operations on the Real Property comply with all Laws, covenants, conditions, restrictions, easements, licenses, Permits, or agreements applicable thereto, and no such improvements and infrastructure violates any (i) zoning or land use Law or similar Governmental Authority restriction, or (ii) any Permit affecting any such Real Property.

(g) Compliance. All material Permits and governmental approvals necessary for the operation of the Business at the Real Property have been received, have not been rescinded, are in full force and effect except for ministerial permits not currently required to be obtained, maintained or renewed, but as to which there are no impediments to receipt, maintenance or renewal. Each Target Company has at all times remained in compliance, in all material respects, with the requirements for the operation of the Business at the Real Property. [REDACTED] neither the Target Companies nor any Seller have received any written notice of (i) violations of building codes and/or zoning ordinances or other Laws affecting the Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Real Property [REDACTED]

(h) Use of Real Property. There are no restrictions in effect applicable to the Real Property that would interfere in any material respect with Buyer's occupancy and use of the Real Property in the Ordinary Course of Business, or (ii) the operation of the Business thereon in the Ordinary Course of Business.

**Section 3.11 Condition and Sufficiency of Assets.**

(a) [REDACTED] the Real Property and Business Assets are adequate for the uses to which they are being put, and no buildings, structures, or Capital Equipment, in each case, owned or leased by the Target Companies is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Business Assets, Real Property, and Business Intellectual Property, together with the Contracts (including Material Contracts) to which any Target Company is a party, are sufficient for the continued conduct of the

Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business in substantially the same manner as conducted prior to Closing.

(b) [REDACTED], the operating condition of the buildings, structures, and Capital Equipment, in each case, owned or leased by each Target Company is serviceable and suitable for railroad transportation services in the Ordinary Course of Business. All of the Business Assets are maintained and operated in material compliance with all applicable Laws.

(c) True and complete copies of all bridge inspections and reports for the prior three (3) years (or exemptions from such inspection and reporting requirements) in the possession, or under the control, of each Target Company have been Made Available to Buyer. [REDACTED]

[REDACTED] (1) the operating condition and repair of all of such Tracks and bridges of each Target Company are serviceable, suitable for railroad transportation services in the Ordinary Course of Business, and have not changed materially since [REDACTED], and (2) all of the Track and bridges owned or operated by each Target Company and currently in service are maintained and operated in material compliance with all applicable Laws, requirements of Grants, loan documents or any other Contracts.

### **Section 3.12 Intellectual Property.**

(a) **Section 3.12(a) of the Disclosure Schedule** lists, together with the applicable Target Company owner thereof, all (i) Business IP Registrations, and (ii) unregistered Business Owned Intellectual Property that is material to the Business. [REDACTED];

(i) all required filings and fees related to the Business IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Business IP Registrations are otherwise in good standing; (ii) each applicable Target Company has the sole right to file, prosecute, and maintain all applications and registrations with respect to the Business IP Registrations; (iii) no Target Company has taken (or failed to take) any action that would reasonably be expected to result in the forfeiture or relinquishment of any Business IP Registrations; (iv) there have been no interferences, re-examinations, oppositions, or other proceedings or claims brought or threatened to be brought involving any of the Target Company Intellectual Property Rights; and (v) each applicable Target Company possesses all right, title, and interest in or has the right to use all Business Intellectual Property free and clear of all Encumbrances and no Person is currently or has formerly infringed, misappropriated, misused, diluted or otherwise violated, any Business Intellectual Property and neither the Target Companies nor the Sellers have received any written notice or assertion from any Person alleging any such infringement, misappropriation, misuse, dilution, or other violation of Business Intellectual Property.

(b) **Section 3.12(b) of the Disclosure Schedule** sets forth a list of all material Intellectual Property that is not owned by a Target Company and that is used by a Target Company in the Business, and a list of each Business IP Contract under which any such material Intellectual Property is used by a Target Company other than off-the-shelf or pre-loaded software or online services for a one-time fee of not more than [REDACTED] or for use without charge. To the Sellers' Knowledge, each of the Business IP Contracts listed on **Section 3.12(b) of the Disclosure Schedule** is legal, valid, binding, enforceable in accordance with its own terms, and in full force and effect, and neither any Target Company nor, to the Sellers' Knowledge, any other party is in breach or default.

(c) Neither: (i) the use, reproduction, modification, display, performance, distribution, licensing, sublicensing, sale, offering for sale, import, or other exploitation by any Target Company of any Business Intellectual Property, nor (ii) the operation of the Business, including any Target Company's provision of Technology, products, or services, infringes or misappropriates any Intellectual Property Rights of any Person.

(d) No Target Company has received written notice of any claims (i) challenging the validity, effectiveness, or ownership by any Target Company of any Business Owned Intellectual Property, or (ii) challenging the validity, effectiveness or ownership of any rights in Business Owned Intellectual Property.

(e) There are no Actions settled [REDACTED], pending or threatened against any Target Company or Seller (i) alleging any infringement, misappropriation, dilution or other violations of any Intellectual Property of any Person by any Target Company or any Seller, or (ii) that constitutes unfair competition or unfair trade practices by any Target Company or any Seller of any Intellectual Property of any Person.

(f) No Target Company or Seller has granted to any Person any right to use any Business Intellectual Property except as listed on [REDACTED]

(g) Each Target Company and Seller has taken commercially reasonable measures to protect the confidentiality of all trade secrets and any other confidential information related to the Business (and any confidential information owned by any Person to whom a Target Company has a confidentiality obligation). No trade secrets or other confidential information have been disclosed by a Target Company or Seller to any Person, except to Persons subject to binding legal, fiduciary or contractual confidentiality obligations or pursuant to a written agreement restricting the disclosure and use of such trade secrets or any other confidential information by such Person.

(h) The IT Systems are sufficient for the immediate needs of the Business, as currently operated. The IT Systems are in good working condition to effectively perform all information technology operations necessary for the Business, as currently operated. [REDACTED]

[REDACTED] there have been no failures, breakdowns, or continued substandard performance of any IT Systems that has caused substantial disruption or interruption in or to any customer's use of the IT Systems or the operation of the Business. No Target Company has agreed to indemnify any third party from and against the use of any IT Systems.

### **Section 3.13 Information and Data Security.**

(a) [REDACTED] there has been no unauthorized use, access to, or disclosure of any Third-Party Data or Personal Information and, to the Sellers' Knowledge, no unauthorized access to or use of the Technology, firmware, hardware, networks, interfaces, platforms, software, systems, servers, network equipment, and other information technology systems owned, leased, used, or licensed by any of the Target Companies ("IT Systems"), including any disruption or interruption to Target Companies' Business during said time period.

(b) [REDACTED] no Target Company has been made aware of any Data Security Incident, experienced any Data Security Incident, or been required under any Privacy and Data Security Laws to notify any Governmental Authority, private entity, or individual of any Data Security Incident.

(c) Each Target Company has, at all times, complied in all material respects with all applicable Privacy and Data Security Laws and all contractual obligations concerning privacy and data security or otherwise relating to the access, collection, processing, use, transfer, disclosure, retention or disposal of Third-Party Data or Personal Information.

(d) No Action is pending or, to Sellers' Knowledge, has been threatened [REDACTED] concerning any claim that any Target Company has violated the terms of any Privacy Policies or Privacy and Data Security Laws. No Target Company has received

any correspondence from any Governmental Authority, private entity, or individual in relation to compliance with Privacy and Data Security Laws.

(e) Each Target Company has all rights necessary to access, collect, use, process, transfer, disclose, and retain all Third-Party Data and Personal Information accessed, collected, generated or used in the current operation of the Business.

**Section 3.14 Indebtedness and Bonds.**

(a) Indebtedness. [REDACTED] (i) no Target Company has any Indebtedness (“**Existing Indebtedness**”), and (ii) no asset of any Target Company is subject to any Encumbrance arising in connection with any Indebtedness, including any security agreement, mortgage, or deed of trust. [REDACTED]

(b) Bonds. The Target Companies have no outstanding bond or mitigation obligations relating to any obligation of any Target Company and any additional security provided to secure the performance by any Target Company of obligations to any Person.

**Section 3.15 Suppliers and Customers.**

(a) Section 3.15(a) of the Disclosure Schedule sets forth a list of the top ten (10) suppliers and contractors to which any Target Company has paid consideration for goods or services rendered in each of the 2022, 2023, and 2024 fiscal years (collectively, the “**Material Suppliers**”); and includes for each Material Supplier the amount of purchases in each of the 2022, 2023, and 2024 fiscal years. No Target Company has received any notice or other communication, or to Sellers’ Knowledge knows, that any Material Supplier (i) may cease, or intends to cease, to supply goods or services to any Target Company or, (ii) may terminate or materially reduce its relationship with any Target Company.

(b) Section 3.15(b)(i) of the Disclosure Schedule sets forth a list of the top ten (10) customers to which any Target Company has provided or sold services in each of the 2022, 2023, and 2024 fiscal years (collectively, the “**Material Customers**”); and includes for each Material Customer the amount of purchases in each of the 2022, 2023, and 2024 fiscal years. [REDACTED]

(c) No Target Company has terminated or reduced, nor does any Target Company have plans to terminate or reduce its relationship with any Material Supplier or Material Customer. To the Sellers' Knowledge, the Transactions contemplated by this Agreement will not adversely affect any Target Company's relationship with a Material Supplier or Material Customer.

**Section 3.16 Insurance.** Section 3.16 of the Disclosure Schedule sets forth an accurate and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, title, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by any Target Company relating to the assets, operations, employees, directors, officers, and managers of any Target Company or the Business (collectively, the "**Insurance Policies**") and accurate and complete copies of such Insurance Policies have been Made Available to the Buyer. The Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the Transactions contemplated by this Agreement. No Target Company has received any notice of cancellation, premium increase with respect to, or alteration of coverage under, any of the Insurance Policies. All premiums due on the Insurance Policies have been paid if due and payable prior to Closing. [REDACTED] the Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of any Target Company. The Insurance Policies are valid and binding and have not been subject to any lapse in coverage. There are no claims under any Insurance Policy as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. No Target Company is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are sufficient for compliance with all applicable Laws and Contracts to which any Target Company is a party or by which it is bound.

**Section 3.17 Legal Proceedings; Governmental Orders.**

(a) [REDACTED] there is no Action pending or, to Sellers' Knowledge, threatened (a) against or by any Target Company, (b) which affects any property or asset of any Target Company or the conduct of the Business as currently conducted; or (c) that challenges or seeks to prevent, enjoin or otherwise delay the Transactions contemplated by this Agreement. No event has occurred or circumstance exists that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties, or awards against or affecting any Target Company or any of its properties or assets, or which might otherwise restrict or impair the conduct of the Business.

**Section 3.18 Compliance with Laws; Permits and Certifications.**

(a) [REDACTED]

(i) [REDACTED] Target Company is and has been in compliance with all Laws that are applicable to such Target Company and the operation of the Business, including, but not limited to, all Laws enforced or administered by the Federal Railroad Administration, the STB, the Railroad Retirement Board, or any other Government Authority;

(ii) [REDACTED] neither the Target Companies nor the Sellers have received (A) any written citations, complaints, compliance schedules, or other similar enforcement orders, (B) written notice of a requirement to pay or paid any fines or penalties to, or (C) any other written notice regarding any alleged violations from any Governmental

Authority, including, but not limited to, the Federal Railroad Administration, the STB, or the Railroad Retirement Board;

(iii) No Target Company is in default under, and, [REDACTED], no condition exists (whether covered by insurance or not) that with or without notice or lapse of time or both would constitute a default under, or breach or violation of, any Law or Permit applicable to the Target Companies; and

(iv) No Target Company is subject to any currently effective Action, order, injunction, judgment, award, decree, ruling, writ, or assessment from any arbitrator or any Governmental Authority, including, but not limited to, the Federal Railroad Administration, the STB, or the Railroad Retirement Board.

(b) All Permits required for any Target Company, and any Target Company employee, to conduct the Business have been obtained by the appropriate Target Company or Target Company employee, as applicable, and are valid and in full force and effect. All fees and charges with respect to such Permits have been paid in full. **Section 3.18(b) of the Disclosure Schedule** lists all current Permits issued to each Target Company, including the names of the Permits and their respective dates of issuance and expiration. Each Target Company has complied and is now complying with the terms of all Permits listed on **Section 3.18(b) of the Disclosure Schedule**. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth on **Section 3.18(b) of the Disclosure Schedule**.

(c) No Target Company nor any Seller Party nor any of their Affiliates or Representatives (in connection with (i) the performance of their duties and responsibilities or (ii) any other actions taken, in each case, on behalf of any Target Company or the Business) has taken any action that has resulted in a violation by any Target Company or any Seller Party of any applicable Laws relating to anti-bribery, money laundering, unlawful political contributions or gifts or corrupt practices, including the U.S. Foreign Corrupt Practices Act of 1977, as amended from time to time, the United Kingdom Bribery Act of 2010, all other national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions and any similar laws. Each Target Company and the Seller Parties have complied in all respects with (i) all applicable Laws and other restrictions relating to the export, transshipment, reexport and other transfers of U.S. origin commodities, software, technology and services, and (ii) all applicable sanctions or anti-boycott Laws.

(d) Except as specifically authorized by a governmental license, license exception, or other permit or applicable authorization of a Governmental Authority, no Target Company nor any Seller Party has:

(i) Made any misrepresentations or otherwise violated the Laws governing the classification, valuation, duties, origination, and marking of foreign-origin products imported into the United States and other relevant jurisdictions (collectively “**Customs Laws**”), as well as any similar requirements imposed under bilateral or multilateral Free Trade Agreements to which the United States is a party (“**FTAs**”). There is no Legal Proceeding pending or, to the knowledge of the Company, threatened against any before any court or other Governmental Authority with respect to any Customs Laws or FTAs.

(ii) exported, reexported, transferred, or brokered the sale of any goods, services, technology, or technical data to or from, or entered into any transaction or had any dealing with, any person or entity for whom a license, encryption registration, or other authorization is required under the U.S. Export Administration Regulations (17 C.F.R. Parts 730-774), the International Traffic in Arms Regulations (26 C.F.R. Parts 120-130), or the U.S. economic and trade sanctions administered by the Office of Foreign

Assets Control (“OFAC,” 31 C.F.R. Parts 500-598), or entered into any transaction prohibited by such laws;

(iii) exported, reexported, or transferred any goods, software, services, technology, or technical data to, on behalf of, or for the benefit of, or had any transaction or dealing with, any person or entity (A) on the Specially Designated Nationals List (“SDN List”) maintained by OFAC, (B) on the Denied Persons, Entity, or Unverified Lists of the Commerce Department’s Bureau of Industry and Security, or (C) on the Debarred List of the Directorate of Defense Trade Controls (if applicable); or

(iv) entered into any transaction or dealing (i) prohibited by or sanctionable under secondary sanctions maintained and administered by the United States Government, including OFAC and the U.S. Department of State or (ii) with any person operating, organized or resident in Cuba, Iran, Syria, Russia, Belarus, North Korea, or the Crimea region of Ukraine, or the Donetsk or Luhansk regions of Ukraine.

(e) The Target Companies do not engage in the design, fabrication, development, testing, production or manufacture of one (1) or more “critical technologies” within the meaning of the Defense Production Act of 1950, as amended (including through the Foreign Investment Risk Review Modernization Act on August 13, 2018), and including all implementing regulations thereof (which were codified in 31 C.F.R. Parts 800 through 802) (the “DPA”).

(f) The Target Companies do not own, or lease or otherwise have certain property rights over (where the Target Companies can physically access the real estate, exclude others from physically access the real estate, improve or develop the real estate, or attach fixed or immovable structures to the real estate) any of the “covered real estate” within the meaning of the DPA.

(g) The Sellers’ written responses to the Committee on Foreign Investment in the United States (CFIUS) related questionnaires as set forth in **Section 3.18(g) of the Disclosure Schedule** are true and accurate.

**Section 3.19 Environmental Matters.**

[REDACTED]



compliance, self-correction, or similar program sponsored by any Governmental Authority, including the Employee Plans Compliance Resolution System, Voluntary Fiduciary Correction Program, or Delinquent Filer Voluntary Correction Program.

(b) Each Benefit Plan (and each related trust, insurance contract or fund) has been established, administered and maintained in accordance with its terms and in material compliance with all applicable Laws (including ERISA and the Code), and all required contributions have been made timely and properly accrued on the Financial Statements. All required reports and descriptions of each Benefit Plan (including Form 5500 annual reports, summary annual reports, summary plan descriptions and summaries of material modifications) have been timely filed with the applicable Governmental Authority and have been distributed as required.

(c) No Benefit Plan, no trustee or administrator thereof, and no other Person has engaged in any breach of fiduciary responsibility or any “prohibited transaction” (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) to which Section 406 of ERISA or Section 4975 of the Code applies and which would reasonably be expected to subject any such Benefit Plan or Trustee or administrator thereof to a penalty under Section 502 of ERISA or a Tax or penalty under Section 4975 of the Code.

(d) Each Benefit Plan that is a Qualified Benefit Plan has received a favorable and, to the extent available under the Internal Revenue Service’s determination letter program, current determination, opinion or advisory letter from the Internal Revenue Service to the effect that such Qualified Benefit Plan is so qualified under Section 401(a) of the Code. No event has occurred that would reasonably be expected to adversely affect the qualification or exemption of any such Benefit Plan, or its related trust or group annuity contract or require the taking of any corrective action pursuant to the Internal Revenue Service’s employee plans compliance resolution system, in order to maintain the qualified status of such Benefit Plan.

(e) No Target Company, nor ERISA Affiliates, sponsor or has within the last six years preceding the date of this Agreement, sponsored, contributed to, or had any obligations or incurred any liability under a Benefit Plan that has been subject to the minimum funding requirements of Section 412 of the Code or Title IV of ERISA. None of the Benefit Plans, and no Target Company, nor its ERISA Affiliates, has ever established, maintained or contributed to, or had an obligation to maintain or contribute to, a “multiemployer plan” within the meaning of Section 3(37) of ERISA, a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA). No Benefit Plan provides compensation or benefits to any employee or service provider of any Target Company who resides or performs services primarily outside of the United States.

(f) None of the Benefit Plans provide welfare benefits (within the meaning of Section 3(1) of ERISA) to any individual after his or her retirement or other termination of employment or service and no Target Company nor its ERISA Affiliates has ever represented, promised or contracted to any individual that such benefits would be provided, except to the extent required by Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA or similar state law. No Target Company nor its ERISA Affiliates has been subject to, and no event has occurred and no conditions or circumstance exists that would reasonably be expected to subject a Target Company or its ERISA Affiliates to any Tax, penalty or payment (whether or not assessed) under Section 4980D or Section 4980H of the Code. No Benefit Plan is an “employer payment plan” (within the meaning of IRS Notice 2013-54) that does not qualify for transition relief under IRS Notice 2015-17 and any subsequent IRS guidance.

(g) There are no pending or, to Sellers’ Knowledge, threatened actions, investigations, suits, or claims pending relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the **three (3) years** prior to the date of this Agreement been the subject of an examination or

audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(h) Except as required by applicable Law, no provision of any Benefit Plan could reasonably be expected to impair any rights of Buyer, any Target Company or any of their respective Affiliates to amend or terminate any Benefit Plan at any time (whether before or after the Closing) and without any Liability to any Target Company, any ERISA Affiliates, Buyer (or any Affiliate of Buyer) or such Benefit Plan other than ordinary administrative expenses. Other than with respect to the 401(k) Plan Amendment and Health and Welfare Plans Termination, neither any Target Company, nor any ERISA Affiliate, has any commitment or obligation, or has made any representations to, any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend or modify any Benefit Plan in connection with the consummation of the Transactions contemplated by this Agreement or otherwise. There has been no amendment, interpretation or other announcement by any Target Company, any ERISA Affiliate or any other Person relating to, or change in participation or coverage under, any Benefit Plan that could materially increase the expense of maintaining such Benefit Plan (or the Benefit Plans taken as a whole) above the level of expense incurred with respect thereto for the most recent fiscal year included in the Financial Statements.

(i) [REDACTED] neither the execution of this Agreement nor any of the Transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of any Target Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual, except as a result of any partial plan termination resulting from the Transactions contemplated by this Agreement; (iii) limit or restrict the right of any Target Company to merge, amend or terminate any Benefit Plan; or (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan.

(j) Each individual who is classified by a Target Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

(k) Each Benefit Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A(d)(1) of the Code has at all relevant times been in documentary compliance and, To Sellers’ Knowledge, been operated in compliance with Section 409A of the Code and all applicable regulatory guidance thereunder (including notices, rulings and proposed and final regulations).

(l) Neither the execution of this Agreement nor any of the Transactions contemplated by this Agreement could (either alone or upon the occurrence of any additional or subsequent events) result in any “excess parachute payments” within the meaning of Section 280G(b) of the Code or require a “gross-up” or other similar payment with respect to Taxes or other amounts incurred pursuant to Section 409A or 4999 of the Code.

### **Section 3.21 Employment Matters.**

(a) **Section 3.21(a) of the Disclosure Schedule** contains a list of all individuals who are employees or independent contractors of any Target Company as of the Effective Date hereof and sets forth for each such individual the following: (i) name; (ii) employing or contracting Target Company; (iii) department; (iv) position; (v) hire date; (vi) whether salary or hourly; and (vii) advances and loans outstanding from any Target Company. Other than annual discretionary bonuses paid in the Ordinary Course of Business, all compensation, including wages, commissions, bonuses and overtime compensation,

payable to all employees of the Target Companies for services performed have been paid in full (or accrued in full on the Interim Balance Sheet) and, except as set forth on Section 3.21(a) of the Disclosure Schedule, there are no outstanding agreements, understandings or commitments of any Target Company with respect to any compensation, commissions or bonuses.

(b) No Target Company is or has been a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”). No Union is or has been representing or purporting to represent any employee of any Target Company, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime, or other similar labor disruption or dispute affecting any Target Company or any of its employees. No Target Company has a duty to bargain with any Union.

(c) Each Target Company has complied in all material respects and is currently complying in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of any Target Company, including but not limited to all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, whistleblowing, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers’ compensation, leaves of absence, credit and character checks, criminal records, drug and alcohol use and testing, personal information protection, personnel files, unemployment and workers’ compensation insurance, and any requirements under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

(d) All individuals characterized and treated by any Target Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of any Target Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. There are no Actions against any Target Company pending, or to the Sellers’ Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of any Target Company, including any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage and hours or any other employment related matter arising under applicable Laws.

(e) Each Target Company has complied with the WARN Act and any applicable state-equivalent act, and no Target Company has any plans to undertake any action that would trigger the WARN Act or any applicable state-equivalent act.

(f) All employees of any Target Company are either United States citizens, or lawful permanent residents of the United States, or are otherwise authorized to work for such Target Company in the United States. All of the Target Companies’ (i) employment practices, including those relating to the hiring and retention of workers and (ii) employment records, including its Employment Eligibility Verification Forms (Form I-9), including all policies related to wages, hours of work, bonuses and other compensation matters, travel and per diem reimbursements, transportation, housing, notification, whether employed directly or through any farm labor contractor and all record keeping and retention practices in support thereof, comply with all applicable Laws. No Target Company has received any notices of violation or potential violation of any immigration or employment Laws, and to Sellers’ Knowledge there are no conditions or circumstances which reasonably would be expected to lead to any Target Company receiving any such notice of violation or potential violation.

**Section 3.22 Taxes.**

(a) **Section 3.22(a) of the Disclosure Schedule** lists for each Target Company the current and historical classification of such Target Company for U.S. federal income tax purposes.

(b) [REDACTED] all Tax Returns required to be filed on or before the Closing Date by any Target Company have been timely filed or validly extended. Such Tax Returns are true, complete, and correct in all material respects and were prepared and filed in compliance with all applicable Laws. [REDACTED] all Taxes due and owing by any Target Company (whether or not shown on any Tax Return) have been, or will be, timely paid. [REDACTED], no Target Company currently is the beneficiary of any extension of time within which to file any Tax Return.

(c) Each Target Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, agents, independent contractor, creditor, customer, member or other party, and has complied with all information reporting and withholding provisions of applicable Law. Each Person providing services to or on behalf of any Target Company, or in connection with the Business, has been properly classified as an employee or an independent contractor, as applicable, for purposes of the withholding and payment of Taxes.

(d) No claim has been made by any Taxing Authority in any jurisdiction where any Target Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(e) No extensions or waivers of statutes of limitations with respect to any Tax Return or Taxes have been given by (or given on its behalf) or requested from any Target Company.

(f) [REDACTED], the amount of each Target Company's Liability for unpaid Taxes for all periods ending on or before the Interim Balance Sheet Date does not, in the aggregate, materially exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes established to reflect timing differences between book and Tax income) reflected on the Financial Statements, rather than any notes thereto. [REDACTED], the amount of each Target Company's Liability for unpaid Taxes for all periods following the end of the most recent period covered by the Financial Statements does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Target Companies.

(g) All Tax deficiencies asserted, or Tax assessments made, against any Target Company as a result of any audit or other examination by any Taxing Authority have been fully paid, and no rationale underlying a claim for Taxes that has been asserted previously by any Taxing Authority could reasonably be expected to be asserted in any Post-Closing Period. No Target Company is a party to or bound by any closing agreement or offer in compromise with any Taxing Authority.

(h) No Target Company is a party to any Action by any Taxing Authority. To Sellers' Knowledge, there are no Actions threatened by any Taxing Authority with respect to any Target Company or the Business.

(i) Sellers have Made Available to the Buyer copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by any Target Company for all Tax Periods ending on or after December 31, 2021.

(j) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon any of the assets of any Target Company.

(k) No Target Company is a party to, or bound by, any Tax indemnity, Tax-sharing or Tax allocation agreement.

(l) [REDACTED] no private letter ruling, technical advice memorandum or similar agreement or ruling has been requested, entered into or issued by any Taxing Authority with respect to any Target Company.

(m) No Target Company has been a member of an affiliated, combined, consolidated or unitary Tax group with any Person other than another Target Company for Tax purposes. No Target Company has incurred any Liability for Taxes of any Person (other than a Target Company's liability for its own Taxes) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(n) No Target Company will be required to include any item of income in, or exclude any item or deduction from, taxable income for any Tax Period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code or adjustment under Section 482 of the Code (or any comparable provisions of state, local or foreign Tax laws), or use of an improper method of accounting, for a Tax Period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) any prepaid amount or deferred revenue received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(o) None of Seller Parties or any Target Company is a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(p) No Target Company is, nor has it ever been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(q) Each Target Company has disclosed on its U.S. federal Tax Returns all positions taken therein that could give rise to a substantial understatement of U.S. federal income Tax within the meaning of Section 6662 of the Code.

(r) [REDACTED]

(s) **Section 3.22(s) of the Disclosure Schedule** sets forth all states and foreign jurisdictions in which any Target Company is subject to Tax, is engaged in business or has a permanent establishment.

(t) Seller Parties have Made Available to the Buyer all documentation relating to any Tax holiday or Tax incentive applicable to any Target Company. Each Target Company is in compliance with the requirements for any applicable Tax holiday or Tax incentive.

(u) No Target Company that is or was at any time classified as a corporation for U.S. federal income Tax purposes (including any such Target Company's predecessor by merger, conversion or otherwise) is or has at any time been subject to either the accumulated earnings tax under Code Section 531 or the personal holding company tax under Code Section 541.

(v) Except as listed on **Section 3.22(v) of the Disclosure Schedule**, each Target Company is an accrual method taxpayer for U.S. federal income tax purposes.

(w) [REDACTED]

(x) [REDACTED]

(y) No Target Company (i) has been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the Code, or (ii) is a party to any joint venture, partnership or other arrangement or contract that could be treated as a partnership for U.S. federal income tax purposes.

(z) [REDACTED] no Target Company has any assets that may constitute unclaimed property under applicable Law. Each Target Company has complied in all material respects with all applicable unclaimed property Law. Without limiting the generality of the foregoing, each Target Company has established and followed procedures to identify any unclaimed property and, to the extent required by applicable Law, remit such unclaimed property to the applicable Governmental Authority.

(aa) All transactions between any Target Company and any Seller Party or Affiliate thereof (including any entity owned or controlled (directly or indirectly) by any Seller Party), were effected on arms'-length terms and for fair market value consideration. Each Target Company has complied with all applicable transfer pricing rules in all respects, and all documentation required by all relevant transfer pricing laws have been timely prepared and, if necessary, retained in all respects.

(bb) Each Target Company has collected all material sales, use, value-added and similar Taxes required to be collected by it and timely remitted such amounts to the applicable Taxing Authority, or has collected and retained completed exemption certificates from all applicable entities from which the Company does not collect such Tax, and each Target Company has with respect to such Taxes (i) maintained all records and supporting documentation in the manner required by all applicable Laws and

(ii) complied with all registration requirements in the manner required by applicable Law, in each case, in all material respects.

**Section 3.23 Relationships with Related Persons; Related Business Activities.** [REDACTED]

[REDACTED]

**Section 3.24 Books and Records; Bank Accounts.**

(a) All existing minutes of meetings, actions taken by written consent, resolutions, and other records of actions of each Target Company have been Made Available to the Buyer. All such meeting minutes, actions taken by written consent, resolutions, or other records of actions are in the possession of the Target Companies.

(b) Each Target Company has at all times been and remains in material compliance with all applicable Laws regarding required approvals, consents, resolutions and other records of actions of each Target Company.

(c) **Section 3.24(c) of the Disclosure Schedule** provides the following information for each account maintained by or for the benefit of any Target Company at any bank or other financial institution: (i) the name of the account or financial institution; (ii) the account number; (iii) the type of account; (iv) the names of all Persons who are authorized signatories; and (v) the account balance as of the Interim Balance Sheet Date.

**Section 3.25 Brokers.** [REDACTED]

[REDACTED]

**Section 3.26 Grants.** **Section 3.26 of the Disclosure Schedule** contains an accurate and complete list of (a) each Federal and state grant and cooperative agreement (the “Grants”) (x) awarded to each Target Company since [REDACTED] or (y) pursuant to which any Target Company has any outstanding obligations or contingent liabilities (in each case, including the amount awarded); (b) the name of the Governmental Authority providing the Grant; (c) the amount disbursed under each such awarded Grant; (d) the amount expected to be disbursed in the future to each Target Company under any such Grant, and the basis for such future disbursement(s); and (e) any conditions or requirements associated with each such Grant. [REDACTED], (i) all material conditions precedent to the receipt of funds under such Grants, including future payments, have been satisfied in full, (ii) the Target Companies are in compliance with all conditions and requirements under all Grants, and (iii) the Target Companies have paid all amounts due and owing to any consultants, contractors, and subcontractors associated with the performance of any Grant. True, correct and complete copies of each

Grant and any material notices, and/or other correspondence related to any Grant, including all amendments thereto, have been Made Available to Buyer.

**Section 3.27 Accounts Receivable; Accounts Payable; and Inventory.**

(a) **Section 3.27(a) of the Disclosure Schedule** includes an aged account receivable list of all accounts receivable of each Target Company as of Interim Balance Sheet Date. [REDACTED], all such receivables are collectible in full except to the extent that proper reserves have been established on the Interim Balance Sheet. The accounts receivable of each Target Company arose from bona fide transactions in the Ordinary Course of Business consistent with past practice. [REDACTED], no such account has been factored, assigned or pledged to any other Person, all such accounts are owned by each such Target Company free and clear of any Encumbrance and no defense or set-off to any such account has been asserted by the account obligor or, to Sellers' Knowledge, exists.

(b) All accounts payable of each Target Company have originated in the Ordinary Course of Business consistent with past practice. **Section 3.27(b) of the Disclosure Schedule** includes an aged account payable list of all accounts payable of each Company as of the Interim Balance Sheet Date. [REDACTED] no accounts payable are more than thirty (30) days past due.

(c) All inventory of the Target Companies, whether or not reflected in the Balance Sheet, consists of a quality usable and salable in the Ordinary Course of Business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Target Companies free and clear of all Encumbrances, and no inventory is held on a consignment basis.

**Section 3.28 No Other Representations or Warranties.** The representations and warranties by Seller Parties in this Agreement and in any Transaction Document constitute the sole and exclusive representations and warranties of the Seller Parties in connection with the transactions contemplated hereby, and neither the Seller Parties nor anyone acting on behalf of the Seller Parties or any Target Company is making any representation or warranty whatsoever, express or implied, beyond those expressly given in this Agreement and the Transaction Documents, and Sellers (for themselves and for each of the other Seller Parties) disclaim any other representations and warranties, express or implied, whether by any Target Company or any other Person (including their Affiliates, officers, directors, employees, agents or representatives).

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF THE BUYER**

Buyer represents and warrants to the Sellers that the statements contained in this ARTICLE IV are true and correct as of the Effective Date and as of the Closing.

**Section 4.01 Organization and Authority of Buyer.** Buyer is a corporation or limited liability company duly organized and validly existing under the Laws of the state of Buyer's organization. Buyer has full corporate or limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or

limited liability company action on the part of Buyer. This Agreement and each other Transaction Document to which Buyer is a party has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by the other parties) this Agreement and each other Transaction Document to which Buyer is a party constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice, or other action by any Person under any Contract to which Buyer is a party. [REDACTED], no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is party and the consummation of the transactions contemplated hereby and thereby.

**Section 4.03 Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer, that challenge or seek to prevent, enjoin or otherwise delay the Transactions contemplated by this Agreement. To Buyer's knowledge, no event has occurred and no circumstances exist that may give rise or serve as a basis for any such Action.

**Section 4.04 Investment Purpose.** Buyer is acquiring the Purchased Equity Interests solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Purchased Equity Interests are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Purchased Equity Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Buyer is able to bear the economic risk of holding the Purchased Equity Interests for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

**Section 4.05 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**Section 4.06 Independent Investigation.** The Buyer acknowledges that it has conducted an independent investigation of the financial condition, results of operations, assets, liabilities, properties and projected operations of the Target Companies and, in making its determination to proceed with the Transactions contemplated by this Agreement, the Buyer has relied solely on the representations and warranties of the Seller Parties expressly set forth in this Agreement and in the Transaction Documents. Such representations and warranties by the Seller Parties constitute the sole and exclusive representations and warranties of the Seller Parties to the Buyer in connection with the transactions contemplated hereby, and the Buyer acknowledge and agree that none of the Seller Parties is making any representation or warranty whatsoever, express or implied, beyond those expressly given in this Agreement and the Transaction Documents. Buyer further acknowledges and agrees that any forward-looking cost estimates, forecasts, projections, predictions, or other forward looking information that may have been provided to Buyer are not representations or warranties of any of the Seller Parties and no assurances are given that any estimated, forecasted, projected, or predicted results will be achieved.

**Section 4.07 Sufficient Funds.** At the Closing, the Buyer will have access to sufficient cash to pay all obligations of Buyer under this Agreement, including to (i) pay at the Closing the payments set forth in Section 2.03 and the other obligations of the Buyer under ARTICLE II when they become due and payable, and (ii) to pay any and all related fees and expenses required to be paid by Buyer, including Buyer's out-of-pocket costs and expenses.

## **ARTICLE V COVENANTS**

**Section 5.01 Conduct of Business Prior to the Closing.** From the Effective Date until the Closing Date, except as otherwise provided in this Agreement or consented to in writing by Buyer, the Sellers shall cause each Target Company to, (a) conduct the Business in the Ordinary Course of Business; and (b) use reasonable best efforts to maintain and preserve intact the Business and each Target Company, and to preserve the rights, goodwill, and relationships of and with their employees, customers, suppliers, regulators, and others having business relationships with any Target Company. The Seller Parties shall promptly notify Buyer of any material event, occurrence, or development outside the Ordinary Course of Business involving the Target Companies that arises from the period from the Effective Date of this Agreement and continuing until the earlier of the termination date of this Agreement or the Closing. In addition, without limiting the foregoing, from the Effective Date hereof until the Closing Date, the Sellers shall cause each Target Company:

- (i) to preserve and maintain all Permits required to operate the Business;
- (ii) to pay its Indebtedness (if any), Taxes (except and unless the Tax is being properly contested by a Seller or Target Company), and other Liabilities when due;
- (iii) to continue in full force and effect without modification all Insurance Policies;
- (iv) to defend and protect its properties and assets from infringement or usurpation;
- (v) to perform all of its obligations, in all material respects, under all Contracts relating to or affecting its properties, assets, or the Business;
- (vi) to maintain its books and records in accordance with past practice;
- (vii) to comply with all applicable Laws; and
- (viii) to (a) refrain from taking, (b) refrain from agreeing to take, and/or (c) refrain from permitting the occurrence of any of the items set forth in Section 3.07 without Buyer's written consent, which consent will not be unreasonably withheld or delayed.

**Section 5.02 Access to Information and Employees.** From the Effective Date until the Closing Date, each Seller Party shall cause each Target Company to, (a) afford Buyer and Buyer's Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts, and other documents and data related to each Target Company and/or the Business; (b) furnish Buyer and its Representatives with such financial, operating, and other data and information related to the Target Companies and the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of each Target Company to reasonably cooperate with Buyer in its investigation of the Target Companies and the Business. No investigation by Buyer or its Representatives or other information received by Buyer or its Representatives shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Sellers in this Agreement; *provided,*

however, Buyer and Buyer's Representatives will only contact and talk with Persons employed by any of the Sellers after Buyer or a Representative of Buyer has requested to do so and [REDACTED]

**Section 5.03 No Solicitation of Other Bids.** Each Seller Party agrees that they shall not, and shall cause each Target Company and their respective Affiliates, shareholders, members, officers, directors, employees, agents, and other Representatives (collectively, the "**Seller Group**") not to, initiate, solicit, entertain, negotiate, accept, or discuss, directly or indirectly, any proposal or offer from any Person or group of Persons other than Buyer and its Affiliates to acquire all or any significant part of the Business and/or properties, assets, stock, partnership interests, limited liability company interests, or equity equivalents of the Business or any Target Company (an "**Acquisition Proposal**"), whether by merger, equity purchase, purchase of assets, tender offer, or otherwise, or provide any non-public information to any third party in connection with an Acquisition Proposal, or enter into any Contract, arrangement, or understanding requiring it to abandon, terminate, or fail to consummate the proposed transactions with Buyer. As of the Effective Date hereof, the Sellers shall, and shall cause the rest of the Seller Group to, terminate any and all existing discussions or negotiations with any person or group of persons other than Buyer and its Affiliates regarding an Acquisition Proposal.

**Section 5.04 Intentionally Omitted.**

**Section 5.05 Governmental Approvals; Consents.**

(a) Each party hereto shall, as promptly as possible, (i) make, or cause to be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates or the contemplated Transaction; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders, and approvals from all Governmental Authorities that may be or become necessary or desired for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other parties and their Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing, or impeding the receipt of any consents, authorizations, orders and approvals. Without limiting the generality of the foregoing provisions in this Section 5.05(a), the Buyer shall ensure that all applicable approvals (or exemptions therefrom), authorizations, and permits to operate the Business as a common carrier railroad ("**Common Carrier Approvals**"), including without limitation, from the STB and/or any other Governmental Authority are sought as promptly as practicable following the Effective Date hereof, and all filing fees in connection with Common Carrier Approvals shall be borne solely by Buyer. Each party hereto shall promptly respond to all inquiries received from the STB or other federal or state agencies relating to Common Carrier Approvals and shall, prior to filing Common Carrier Approvals, provide the other party with an opportunity to review and comment on them.

(b) Buyer and Seller Parties shall cooperate to obtain the consent in the form of a final order of the Federal Communications Commission ("**FCC**") pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948 (the "**FCC Consent**") for the transfer of control of the radio license authorization set forth on Section 5.05(b) of the Disclosure Schedule (the "**FCC License**"). Promptly following execution of this Agreement, but not later than *five (5) Business Days* following execution of this Agreement, Buyer and the Seller Parties shall initiate the process of obtaining the FCC Consent.

(c) The Sellers shall give all notices to, and obtain all consents from, all third parties that are described in Section 3.04 of the Disclosure Schedule.



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

**Section 5.09 Employment and Employee Benefits.**

(a) With respect to each Target Company employee that continues their employment through the Closing (the “**Continuing Employees**”), Buyer shall recognize all service of the Continuing Employees with the Sellers, as if such service were with Buyer, so that the Continuing Employees will be entitled to participate in employee benefit plans that provide for compensation and benefits, in the aggregate, similar to that of the Benefit Plans of the Target Companies. To the extent permitted by applicable state Law, Buyer shall credit Continuing Employees, including for purposes of eligibility to participate, vesting, and eligibility to receive benefits under employee benefit plan, program, or arrangement made available to employees by Buyer, for service accrued or deemed accrued with respect to the Target Companies prior to the Closing Date, to the extent such service was recognized for purposes of the Benefit Plans; *provided, however*, that such crediting of service shall not operate to duplicate any benefit or the funding of any such benefit.

[REDACTED]

It is understood and agreed that all provisions contained in this Agreement with respect to employee benefit plans or employee compensation are included for the sole benefit of the respective parties hereto and do not and shall not create any right in any other Person, including any participant in any employee benefit or compensation plan or any beneficiary thereof or any employee. Buyer and Buyer’s Affiliates shall use commercially reasonable efforts to (i) cause to be waived any waiting periods, evidence of insurability requirements, or pre-existing condition limitations and similar limitations under all Buyer Benefit Plans to the extent waived or satisfied by a Continuing Employee, any dependent of a Continuing Employee, and any individual receiving COBRA coverage as required under Section 5.09(c) (a “**Welfare Plan Participant**”) under any Benefit Plan and (ii) give (or cause to be given) credit for amounts paid on or after January 1, 2025, and prior to the Closing by a Welfare Plan Participant under a corresponding Benefit Plan for purposes of applying deductibles, co-payments, and out-of-pocket maximums under all Buyer Benefit Plans as though such amounts had been paid in accordance with the terms and conditions of such Buyer Benefit Plans. Nothing contained herein shall be treated as an amendment or other modification of any Benefit Plan, or shall limit the right of Buyer to amend, terminate, or otherwise modify any such Benefit Plan following the Closing Date in accordance with its terms.

[REDACTED]

[REDACTED]

**Section 5.10 Electronic Copy of Data Site.** The Sellers shall deliver (or cause to be delivered) to Buyer, within *ten (10) Business Days* after the Closing Date, a CD, DVD, flash drive, or similar electronic storage medium to Buyer containing readable copies of the contents of the Data Site as of *one (1) Business Day* prior to the Closing Date.

**Section 5.11 Tail Policies.** Prior to the Closing, the Sellers shall (at Sellers' expense) cause the Target Companies to obtain fully-paid up irrevocable "tail" insurance policies with respect to director and officer liability and employment practice liability with coverage for a period of [REDACTED] after the Closing (the "Tail Policy").

**Section 5.12 Business Names.**

(a) Following the Closing, Seller Parties and their Affiliates shall refrain from using any of the business names included on **Schedule 5.12** or any derivation thereof (the "**Business Names**"); *provided*, however, nothing herein shall require Seller Parties to change or discontinue the use of the entity names of [REDACTED]

(b) Within *thirty (30) Business Days* after the Closing Date, the Sellers shall make all reasonably necessary filings and recordings to change their respective corporate names to a name that does not include the Business Names.

**Section 5.13 Confidentiality.**

(a) From and after the Closing, each Seller Party shall, and shall cause its respective Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Target Companies, except to the extent that the Seller Parties can show that such information (a) is generally available to and known by the public through no fault of the Seller Parties, any of their Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller Parties, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller Parties or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller Parties shall promptly notify Buyer in writing and shall disclose only that portion of such information which such Seller Party is advised by its counsel in writing is legally required to be disclosed, provided that such Seller Party shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. The parties agree and acknowledge that the terms of, and all obligations under, that certain

Confidentiality Agreement, dated [REDACTED] shall terminate upon the Closing and be of no further force or effect.

(b) The Buyer shall not, and shall cause all of its Affiliates not to, disclose the economic terms and provisions of this Agreement or any Transaction Document without the prior written consent of the Seller Representative; provided, however, that Buyer and its Affiliates may provide (x) information about any of the Target Companies, (y) information in respect of the subject matter of this Agreement and (z) the general terms and results of its investment in and involvement with any of the Target Companies, in each case in connection with fund raising, marketing, financing, informational or reporting activities. Notwithstanding the foregoing, the provisions of this Section 5.13(b) shall not prohibit the disclosure of the economic terms and provisions of this Agreement or any Transaction Document by Buyer or any of its Affiliates to the extent reasonably required: (i) to prepare or complete any required Tax Returns or financial statements; (ii) in connection with audits or other proceedings by or on behalf of a Governmental Authority; (iii) to perform their respective obligations in accordance with the terms and conditions of this Agreement or any of the Transaction Documents; (iv) in connection with asserting any rights or remedies or performing any obligations under this Agreement or any of the Transaction Documents to which it is a party; or (v) to obtain advice or services from a financial or tax advisor, attorney or accountant who is subject to a customary obligation of confidentiality.

**Section 5.14 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the Transactions contemplated by this Agreement.

**Section 5.15** [REDACTED]

[REDACTED]

**Section 5.16 Post-Closing Office Space Usage.**

(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE VI  
TAX MATTERS**

**Section 6.01 Intended Tax Treatment.** The parties to this Agreement agree that, for U.S. federal income tax purposes, the restructuring steps described in the Restructuring Transactions Summary shall be treated in the manner ascribed to those steps in the Restructuring Transactions Summary (collectively, the “**Intended Tax Treatment**”). Unless otherwise required pursuant to a Final Determination, the parties to this Agreement shall file all Tax Returns and maintain such positions in connection with any audit, examination, or judicial or administrative proceeding in a manner that is consistent with the Intended Tax Treatment.

**Section 6.02 Allocation.** The parties to this Agreement agree that the Purchase Price (plus any other amounts properly treated as additional consideration) shall be allocated for all Tax purposes in accordance with the Purchase Price allocation set forth on the allocation schedule attached hereto as **Schedule 6.02** (the “**Allocation Schedule**”), first between the Purchased Equity Interests for the different Target Companies, and then among the assets of such entities, in a manner consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder. Any adjustments to the Purchase Price pursuant to this Agreement shall be allocated in a manner consistent with the Allocation Schedule. The parties will not file any Tax Return or otherwise take any position with respect to Taxes that is inconsistent with the Allocation Schedule, as adjusted, except as required by applicable Law following a Final Determination. For the avoidance of doubt, the Parties acknowledge and agree that, for U.S. federal and applicable state and local income Tax purposes, any obligations of any Target Company with respect to deferred revenues or prepaid amounts that are treated as assumed by Buyer or any of its Affiliates pursuant to this Agreement shall not be treated as giving rise to taxable income of Buyer or any of its Affiliates under the principles of *James M. Pierce Corp.*, 326 F.2d 67 (8th Cir. 1964).

**Section 6.03 Preparation of Tax Returns.**

(a) To the extent not already filed before the Closing Date, Seller Representative shall prepare or cause to be prepared for filing by the applicable Target Company, at Seller’s cost, all Tax Returns for the Target Companies that relate in whole or in part to Tax Periods ending on or before December 31, 2024, and any other Tax Returns that are due on or before the Closing Date. All such Tax Returns shall be prepared in a manner consistent with the Target Companies’ past practices in preparing such Tax Returns (where relevant) and applicable Tax Laws. Such Tax Returns (including any related work papers or other information reasonably requested by Buyer) shall be provided to Buyer for its review at least **forty-five (45) days** (but only **twenty (20) days** in the case of non-income Tax Returns) before the due date for filing such Tax Returns (including extensions). Buyer shall provide any written comments to Seller Representative within **ten (10) Business Days** (but only **five (5) Business Days** in the case of non-income Tax Returns) after delivery of such Tax Returns and all such reasonable comments timely made by Buyer shall be incorporated into and reflected in such Tax Returns prior to filing with the applicable Taxing Authority.

(b) [REDACTED]



(a) Except as provided in Section 6.05(b), Seller Representative shall be entitled to control the conduct and defense of all claims and proceedings relating to Indemnified Taxes with respect to any Pre-Closing Tax Period. In connection with such claims or proceedings, Seller Representative: (i) shall keep Buyer fully informed concerning the status and progress of such claims or proceedings and (ii) shall provide Buyer with copies of all non-ministerial correspondence between Sellers and the applicable Taxing Authority, and (iii) shall not settle any such claim or proceeding without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed. Buyer's designee will have the right to participate in the defense of any such claims or proceedings to the extent the resolution of such claims or proceedings could result in any Tax liability for Buyer, or any Target Company or the direct or indirect owners of any such entity in periods after the Closing Date, and to employ counsel, at Buyer's expense, separate from the counsel employed by Sellers.

(b) Notwithstanding anything to the contrary in Section 6.05(a), the conduct and defense of any claim or proceeding relating to Taxes of Buyer or any of the Target Companies for any Post-Closing Tax Periods shall be controlled by Buyer, at Buyer's sole expense.

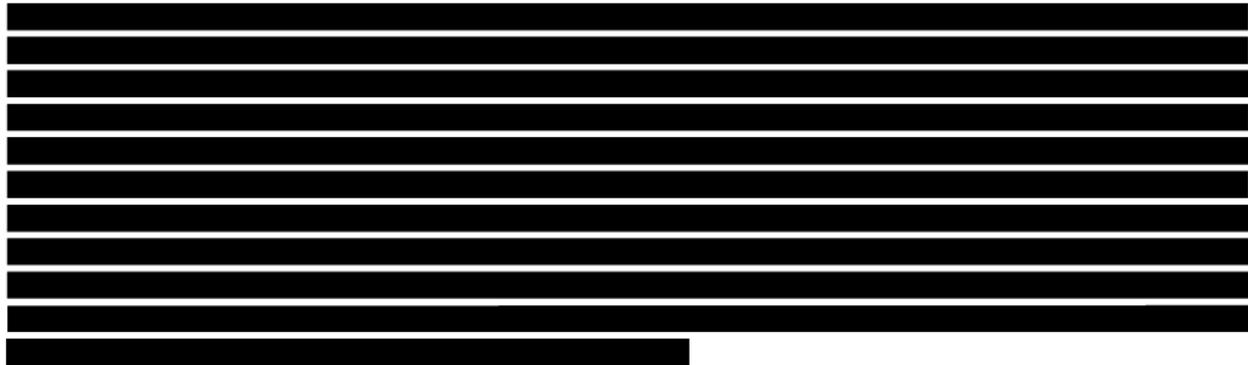
(c) Buyer and Sellers shall promptly notify each other of the commencement of any claim or proceeding against Buyer or any of the Target Companies relating to Indemnified Taxes with respect to any Pre-Closing Tax Period.

**Section 6.06 Transfer Taxes.** All change in controlling interest real estate excise, capital gains excise, or any other excise or transfer or other such Taxes (except for sales and use Taxes) (including any penalties and interest) incurred in connection with any of the Transactions contemplated by this Agreement shall be borne and paid by Sellers when due. Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Meanwhile, all sales and use Taxes (including any penalties and interest) incurred in connection with any Transaction contemplated by this Agreement [REDACTED] shall be borne and paid by Buyer when due. Buyer shall, at Buyer's own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Sellers shall cooperate with respect thereto as necessary).

**Section 6.07 Tax Indemnification.** [REDACTED]

[REDACTED]



**Section 6.08 Cooperation and Exchange of Information.** The Sellers and Buyer shall provide each other with such cooperation and information as any of them reasonably may request of the other in connection with the preparation and filing of any Tax Return pursuant to this ARTICLE VI or in connection with any audit or other proceeding in respect of Taxes relating to the Target Companies or the Business. Such cooperation and information shall include providing copies of relevant historical financial data, information, and documentation, Tax Returns or portions thereof, together with accompanying schedules, related work papers, and documents relating to rulings or other determinations by any Taxing Authority. Each of Sellers and Buyer shall retain, and shall cause the Target Companies to retain, all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Target Companies or the Business for any Tax Period beginning on or before the Closing Date until the expiration of the statute of limitations of the Tax Period to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax Periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Target Companies or the Business for any Tax Period beginning on or before the Closing Date, the Sellers or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

**Section 6.09 Survival.** Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.22 and this ARTICLE VI shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus *sixty (60) days*. Notwithstanding the foregoing, any claims asserted by Buyer Indemnitees in good faith with reasonable specificity (to the extent known at such time) and in writing by notice to the Seller Indemnitors prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant survival period and such claims shall survive until finally resolved.

**Section 6.10 Seller Transaction Expenses; Extraordinary Items.** To the maximum extent permitted by applicable Law, deductions attributable to Seller Transaction Expenses, to the extent such Seller Transaction Expenses are paid or accrued on or prior to the Closing Date, shall be allocated to the Pre-Closing Tax Period and reflected as such on the Sellers' income Tax Returns for the taxable year of such entities that includes the Closing Date. "Extraordinary items," as defined in Treasury Regulations Section 1.706-4(e)(2), arising or resulting from the Transaction shall be allocated to the Pre-Closing Tax Period and reflected as such on the Sellers' income Tax Returns for the taxable year of such entities that includes the Closing Date to the maximum extent permitted by applicable Law.

**Section 6.11 Overlap.** To the extent that any obligation or responsibility pursuant to ARTICLE VII may overlap with an obligation or responsibility pursuant to this ARTICLE VI, the provisions of this ARTICLE VI shall govern. For the avoidance of doubt, the limitations on indemnification set forth in Section 7.04 shall not apply for purposes of this ARTICLE VI.

**ARTICLE VII  
INDEMNIFICATION**

**Section 7.01 Survival.**

[REDACTED]

**Section 7.02 Indemnification by the Seller.**

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

**Section 7.03 Indemnification by Buyer.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

**Section 7.04 Certain Limitations.** The indemnification provided for in Section 7.02 and Section 7.03 shall be subject to the following limitations:

■ [REDACTED]

■ [REDACTED]

[Redacted]

- [Redacted]

[Redacted text block]

- [Redacted text block]

**Section 7.05 Indemnification Procedures.**

- [Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Section 7.06 Payments.**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**Section 7.07 Releases.**

[Redacted]

[REDACTED]

[REDACTED]

**Section 7.08 Exclusive Remedies.** [REDACTED]

[REDACTED]

[REDACTED]

**Section 7.09 Indemnity Escrow.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Section 7.10 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax and accounting purposes, unless otherwise required by Law.

**ARTICLE VIII  
CONDITIONS TO CLOSING**

**Section 8.01 Conditions to Obligations of All Parties.** The obligations of each party to consummate the Transactions contemplated by this Agreement shall be subject to there being no Governmental Order in effect which makes the Transactions contemplated by this Agreement illegal, or which otherwise restrains or prohibits the consummation of such transactions or causes any of the transactions contemplated hereunder to be rescinded following completion thereof.

**Section 8.02 Conditions to Obligations of the Buyer.** The obligations of the Buyer to consummate the Transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing Date, of each of the following conditions:

(a) Each Seller Party shall have delivered or caused the Target Companies to deliver to the Buyer each of the closing deliverables described in Section 2.06(a) of this Agreement to be delivered by the Sellers.

(b) Other than the representations and warranties of the Seller Parties contained in Section 3.01, Section 3.02, and Section 3.03, the representations and warranties of the Sellers contained in Article III of this Agreement, the other Transaction Documents, and any certificate or other writing delivered pursuant hereto shall be true and correct in all material respects (except those including materiality or Material Adverse Effect qualifiers, which shall be true and correct in all respects) on and as of the date hereof and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date). The representations and warranties of the Seller Parties contained in Section 3.01, Section 3.02, and Section 3.03 shall be true and correct in all respects on and as of the date hereof and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(c) Each Seller Party shall have performed and complied in all material respects with all agreements, covenants, and conditions (except those including materiality or Material Adverse Effect qualifiers, which shall have been performed and complied with in all respects) required by this Agreement and each of the other Transaction Documents to be performed or complied with by such Person prior to or on the Closing Date.

(d) No Action shall have been commenced against the Seller Parties or any Target Company which could reasonably be expected to prevent or materially delay the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(e) All approvals, consents, authorizations, and waivers that are, or are required to be, listed on Section 3.04 of the Disclosure Schedule shall have been received, in each case in form and substance reasonably satisfactory to Buyer (such approval not to be unreasonably withheld, delayed or conditioned), and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(f) There shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.

(g) [REDACTED]

(h) Buyer shall have received a certificate, in form and substance reasonably satisfactory to Buyer (such approval not to be unreasonably withheld, delayed or conditioned), dated as of the Closing Date and signed by the Seller Representative, that each of the conditions set forth in Section 8.02(b), Section 8.02(c), and Section 8.02(d) of this Agreement have been satisfied.

(i) Buyer shall have received a certificate, in form and substance reasonably satisfactory to Buyer (such approval not to be unreasonably withheld, delayed or conditioned), dated as of the Closing Date and signed by the Seller Representative, certifying:

(i) true and complete copies of the Organizational Documents of each of the Target Companies, as then in effect and attached thereto; and

(ii) as to each Seller, true and complete copies of all resolutions of the board of directors and shareholders of such Seller, attached thereto, authorizing (A) the execution, delivery, and performance of this Agreement and the other Transaction Documents to which such Seller is a party and the consummation of the Transaction, and (B) the due appointment and authority of the Seller Representative to execute and deliver, on behalf of such Seller, this Agreement and each Transaction Document to which such Seller is a party.

(j) The Sellers shall have delivered (or caused to have been delivered) to Buyer the remaining Transaction Documents and such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the Transactions contemplated by this Agreement.

(k) Resignations effective as of the Closing Date, executed and delivered by each officer, director, registered agent, and Benefit Plan trustee of each Target Company, in the form and substance of the Resignation Notice.

(l) The Seller Parties shall provide evidence that the Target Companies have obtained the Tail Policy.

**Section 8.03 Conditions to Obligations of the Sellers.** The obligations of the Sellers to consummate the Transactions contemplated by this Agreement shall be subject to the fulfillment or the waiver by the Seller Representative, at or prior to the Closing Date, of each of the following conditions:

(a) The Buyer shall have delivered to Sellers each of the closing deliverables described in Section 2.06(b) of this Agreement to be delivered by Buyer.

(b) The representations and warranties of the Buyer contained in ARTICLE IV of this Agreement, the other Transaction Documents, and any certificate or other writing delivered pursuant hereto shall be true and correct in all material respects (except those including materiality or Material Adverse Effect qualifiers, which shall be true and correct in all respects) on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date).

(c) The Buyer shall have duly performed and complied in all material respects with all agreements, covenants, and conditions (except those including materiality or Material Adverse Effect qualifiers, which shall have been performed and complied with in all respects) required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(d) No Action shall have been commenced against the Buyer which could reasonably be expected to prevent or materially delay the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(e) The Seller Representative shall have received a certificate, in form and substance reasonably satisfactory to the Seller Representative (such approval not to be unreasonably withheld, delayed or conditioned), dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 8.03(b), Section 8.03(c), and Section 8.03(d) of this Agreement have been satisfied.

(f) Seller Representative shall have received a certificate, in form and substance reasonably satisfactory to Seller Representative (such approval not to be unreasonably withheld, delayed or conditioned), dated as of the Closing Date and signed by a duly authorized officer of Buyer, certifying as to Buyer, true and complete copies of all resolutions of the board of director of such party, attached thereto, authorizing (A) the execution, delivery, and performance of this Agreement and the other Transaction Documents to which Buyer is a party and the consummation of the Transaction, and (B) the due appointment and authority of Buyer's signatory/signatories for this Agreement and the Transaction Documents.

(g) The Buyer shall have delivered (or caused to have been delivered) to the Seller Representative the remaining Transaction Documents and such other documents or instruments as the Seller Representative reasonably requests and are reasonably necessary to consummate the Transactions contemplated by this Agreement.

(h) All approvals, consents and waivers that are listed on **Section 8.03(h) of the Disclosure Schedule** shall have been received, and executed counterparts thereof shall have been delivered to Seller at or prior to the Closing.

## ARTICLE IX TERMINATION

**Section 9.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of both the Seller Representative (on behalf of the Sellers) and Buyer;

(b) by the Buyer by written notice to the Seller Representative if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in, or failure to perform any representation, warranty, covenant, or agreement made by the Sellers Parties pursuant to this Agreement that would reasonably give rise to the failure of any of the conditions specified in ARTICLE VIII, and such breach, inaccuracy, or failure (to the extent curable) has not been cured by the Sellers within ***ten (10) Business Days*** of the Seller Representative's receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 8.01 or Section 8.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by [REDACTED] unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(c) by the Seller Representative (on behalf of the Sellers), by written notice to the Buyer if:

(i) no Seller Party is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in, or failure to perform any representation, warranty, covenant, or agreement made by Buyer or Buyer pursuant to this Agreement that would reasonably give rise to the failure of any of the conditions specified in ARTICLE VIII and such breach, inaccuracy, or failure has not been cured by Buyer within ***ten (10) Business Days*** of Buyer's receipt of written notice of such breach from the Seller Representative;

(ii) any of the conditions set forth in Section 8.01 or Section 8.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by [REDACTED], unless such

failure shall be due to the failure of any Seller Party to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with prior to the Closing; or

(d) by the Buyer or the Seller Representative (on behalf of the Sellers) in the event that (i) there shall be any Law that makes consummation of the Transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the Transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

**Section 9.02 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

- (a) as set forth in ARTICLE IX and ARTICLE X of this Agreement; and
- (b) that nothing herein shall relieve any party hereto from liability for any breach of any provision hereof for Fraud or intentional misrepresentations.

## ARTICLE X MISCELLANEOUS

### Section 10.01 Seller Representative.

(a) Each Seller Party irrevocably nominates, constitutes, and appoints the Seller Representative, with full power of substitution, to act in the name, place, and stead of each of them for purposes of executing any documents and taking any actions delegated or otherwise assigned to the Seller Representative under this Agreement that the Seller Representative may, in the Seller Representative's sole discretion, determine to be necessary, desirable or appropriate in connection with this Agreement and any of the Transaction Documents. By way of amplification and not limitation, as the Seller Representative, the Seller Representative shall be authorized and empowered, as an agent of and on behalf of each Seller Party to give and receive notices and communications as provided herein, to object to any indemnification claims, to agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to, such claims or Losses, to waive before or after the Closing any breach or default of Buyer of any obligation to be performed by either such Party under this Agreement or any Transaction Document, to receive service of process on behalf of each Seller Party in connection with any claims against such Person arising under or in connection with this Agreement, any document or instrument provided for hereby or any of the transactions contemplated hereby, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Seller Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement.

(b) [REDACTED] No notice or communication by or from the Seller Representative shall be effective unless signed by all individuals designated and appointed herein as the Seller Representative. Notices or communications to or from the Seller Representative shall constitute notice to or from each Seller Party.

(c) Each Seller Party grants to the Seller Representative full authority to execute, deliver, acknowledge, certify, and file on behalf of such Persons any and all documents that the Seller Representative may, in his sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as the Seller Representative may, in the Seller Representative's sole discretion, determine to be appropriate, in performing their duties as contemplated hereby. Notwithstanding anything to the contrary contained in this Agreement or in any other agreement executed in connection with

the Transaction hereby: (i) each Indemnified Party shall be entitled to deal exclusively with the Seller Representative on all matters relating to any claim for indemnification, compensation or reimbursement under ARTICLE VI or ARTICLE VII; and (ii) each Indemnified Party shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Seller Party by the Seller Representative, and on any other action taken or purported to be taken on behalf of any Seller Party by the Seller Representative, as fully binding upon such Person. Each Seller Party agrees to indemnify, defend and hold harmless the Seller Representative for all actions taken as the Seller Representative in good faith.

(d) Each Seller Party recognizes and intends that the power of attorney granted in this Section 10.01: (i) is coupled with an interest and is irrevocable; (ii) may be delegated by the Seller Representative; and (iii) shall survive the death, incapacity, dissolution, liquidation, or winding up of each of such Person. Each Seller Party hereby consents to the imposition of any injunctive relief necessary to enforce the provisions of this Section 10.01 and acknowledge the Seller Representative's authority.

(e) If any individual appointed to serve as the Seller Representative shall resign, die, become disabled, or otherwise be unable to fulfill his responsibilities hereunder, the Sellers shall immediately appoint a successor to serve as the Seller Representative and notify Buyer of such events.

**Section 10.02 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *except that*, (a) Buyer and Sellers shall be equally responsible for all fees of the Escrow Agent related to the transactions contemplated herein, and (b) all Taxes shall be allocated as expressly set forth in ARTICLE VI of this Agreement.

**Section 10.03 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.03):

If to the Sellers:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

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

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If to the Buyer:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Section 10.04 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.05 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits, Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule), the statements in the body of this Agreement will control.

**Section 10.06 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or delegate its obligations hereunder without the prior written consent of the other parties. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.07 Disclosure Schedule.** The mere inclusion of any item in any section or subsection of any of the Disclosure Schedule, as an exception to any representation or warranty or otherwise, shall not be deemed to constitute an admission of liability by any party. The sections or subsections of each Disclosure Schedule are arranged in sections corresponding to the numbered and lettered sections and subsections of this Agreement. Matters disclosed in any section or subsection of any of the Disclosure

Schedule are not necessarily limited to matters that are required by this Agreement to be disclosed therein. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature or impose any duty or obligation to disclose any information beyond what is required by this Agreement, and disclosure of such additional matters shall not affect, directly or indirectly, the interpretation of this Agreement or the scope of the disclosure obligations hereunder. To the extent cross references are set forth in any section or subsection of any of the Disclosure Schedule, such cross-references shall serve as a disclosure under the referenced section. Any information set forth in one section or subsection of such Disclosure Schedule shall be deemed to apply to each other section or subsection thereof or hereof to which its relevance is reasonably apparent based on the language of the applicable disclosure. Headings inserted in the sections or subsections of any of the Disclosure Schedule are for convenience of reference only and shall to no extent have the effect of amending or changing the express terms of the Sections or subsections as set forth in this Agreement.

**Section 10.08 No Third-party Beneficiaries.** Except as provided in Section 5.09 and ARTICLE VII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Buyer and each Seller Party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

[REDACTED]

[REDACTED]

**Section 10.11 Dispute Resolution.** If a Dispute arises, the parties to the Dispute shall follow the procedures specified in this Section 10.11.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Closing, where such representation or services may be (A)(1) in conjunction with the Transaction contemplated by this Agreement, or (2) in matters substantially related to the Transaction contemplated by this Agreement, and (B) directly or otherwise materially adverse to the interests of Buyer and/or any Target Company, and (ii) to use Privileged Information developed during the provision of services to each Target Company for the purposes of such representation or provision of services to the Sellers after the Closing. Notwithstanding the foregoing, in the event that a dispute arises between Buyer or any Target Company, on the one hand, and a Person other than the Sellers, on the other hand, each Target Company may, to the extent permitted by applicable Law, assert the attorney-client privilege to prevent disclosure to such third party of confidential communications by or between Sellers' Legal Advisors and each Target Company.

**Section 10.14 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. This Agreement may be executed and delivered via any nationally recognized electronic signature service recognized under the E-Sign Act.

[Signatures on the Following Pages]

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

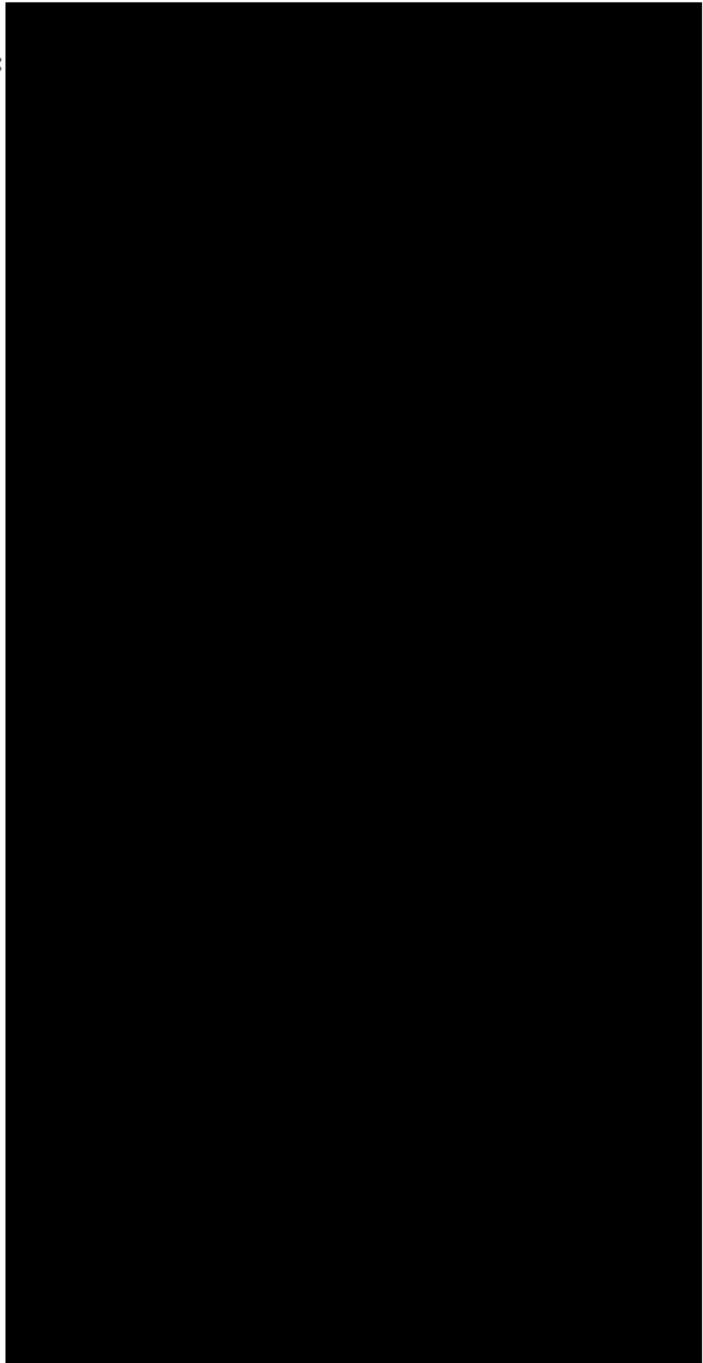
**BUYER:** [REDACTED]

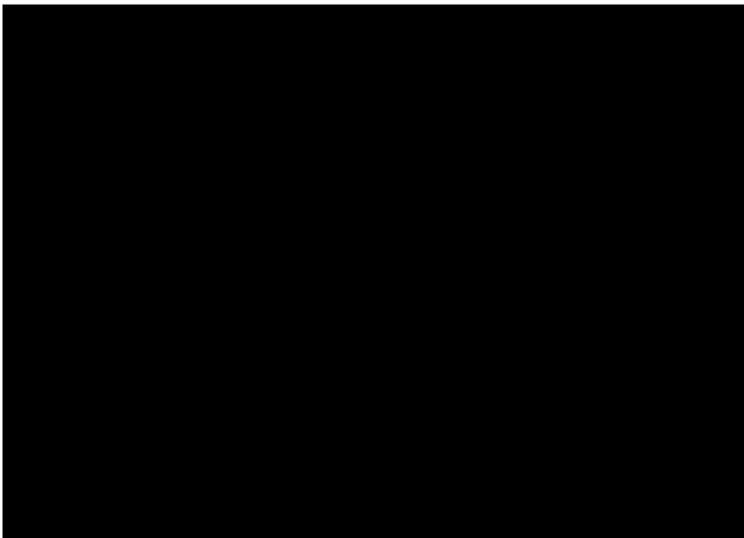
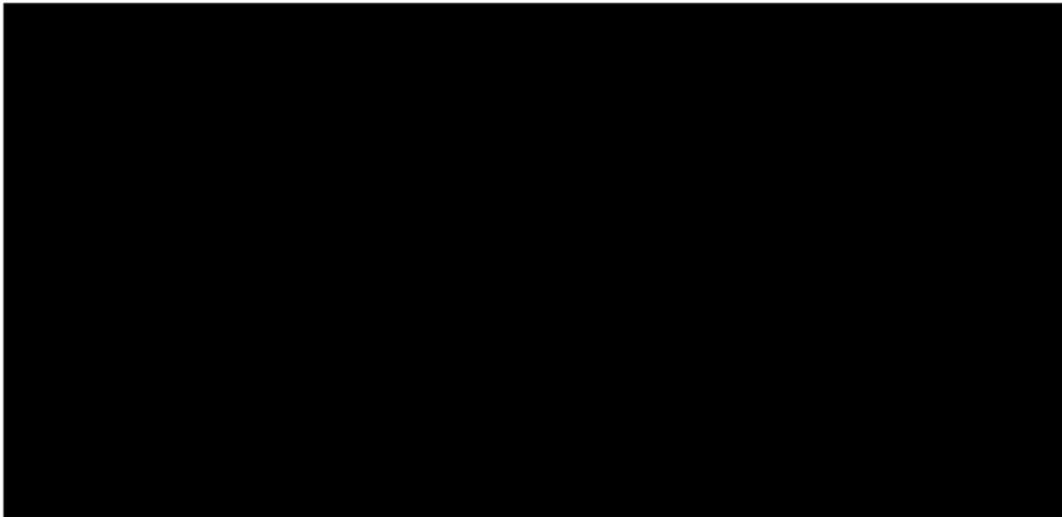
[REDACTED]

[REDACTED]

[REDACTED]

**SELLERS:**





## EXHIBIT A

### DEFINED TERMS

“**401(k) Plan**” has the meaning set forth in Section 5.09(b).

“**401(k) Plan Amendment**” has the meaning set forth in Section 5.09(b).

“**Acquisition Proposal**” has the meaning set forth in Section 5.03.

“**Action**” means any claim, charge, complaint, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, examination, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at Law or in equity.

“**Adjusted Purchase Price**” has the meaning set forth in Section 2.04(c)(iv).

“**Admin. Support Business**” has the meaning set forth in the Recitals.

“**Affiliate**” of a Person means (a) with respect to a Person that is an entity, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, and (b) with respect to a Person that is an individual, any trust or business entity under their control, or any assignees or successors in interest to this Agreement by transfer of rights or legal succession. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or caused the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreed Accounting Principles**” has the meaning set forth in Section 2.04.

“**Agreement**” has the meaning set forth in the Preamble.

“**Allocation Schedule**” has the meaning set forth in Section 6.02.

“**Annual Financial Statements**” has the meaning set forth in Section 3.05(a).

“**Balance Sheets**” has the meaning set forth in Section 3.05(c).

“**Balance Sheet Date**” has the meaning set forth in Section 3.05(c).

“**Base Price**” has the meaning set forth in Section 2.03(a).

“**Basket**” has the meaning set forth in Section 7.04(a).

“**Benefit Plan**” means any pension, benefit, retirement, compensation, profit-sharing, deferred compensation, incentive, commission, performance award, phantom equity, equity or equity-based, change in control, retention, severance, vacation, paid time off, Code Section 125 cafeteria plan, fringe-benefit and other similar agreement, plan, policy, program or arrangement, in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, (a) sponsored, maintained, contributed to or required to be contributed to by any Target Company or any ERISA Affiliate (or to which any Target Company or any ERISA Affiliate is a party); (b) covering or benefiting any current or former director, manager, officer, employee, agent, or independent contractor of any Target Company (or any dependent or beneficiary of any such individual); or (c) with respect to which any Target Company

or any ERISA Affiliate has (or could have) any Liability, or with respect to which Buyer, each Target Company or any of their Affiliates would reasonably be expected to have any Liability, contingent or otherwise.

[REDACTED]

“BNSF” means and refers to BNSF Railway Company, a Delaware corporation.

[REDACTED]

[REDACTED]

[REDACTED]

“Business” has the meaning set forth in the Recitals.

“Business Assets” has the meaning set forth in Section 3.09.

“Business Day” means any day except Saturday, Sunday, or any other day on which commercial banks located in Seattle, Washington, are required by Law to be closed for business.

“Business Intellectual Property” means all Intellectual Property that is owned by, or licensed exclusively to, any Target Company.

“Business IP Contracts” means all grants of exclusivity, licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, noncompetition or non-solicitation obligations, rights of first refusal, rights of parity of treatment, grants of most favored nation status, rights of first negotiation, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which any Target Company is a party, beneficiary or otherwise bound, but excluding shrink-wrap, click-wrap, or similar commercially available off-the-shelf software license that (a) have not been modified or customized for a Target Company and (b) have an acquisition price or annual license fee not in excess of \$25,000.

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

“Business Names” has the meaning set forth in Section 5.12.

“Business Owned Intellectual Property” means all Intellectual Property owned by any Target Company.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Indemnitees” has the meaning set forth in Section 7.02.

“Buyer Released Claims” has the meaning set forth in Section 7.07(b).

“**Buyer Released Parties**” has the meaning set forth in Section 7.07(a).

“**Buyer Released Party**” has the meaning set forth in Section 7.07(a).

“**Buyer Releasing Parties**” has the meaning set forth in Section 7.07(b).

“**Buyer Releasing Party**” has the meaning set forth in Section 7.07(b).

“**Cap**” has the meaning set forth in Section 7.04(a).

“**Capital Equipment**” means equipment owned by a Target Company with an original purchase price of at least [REDACTED] and listed on such Target Company’s depreciation schedule.

“**Cash and Cash Equivalents**” means all cash and cash equivalents (including deposits), determined using the methodologies set forth on Section 2.04.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Certifications**” means any certificate or designation of status or authority regarding the operation of the Business issued by a Governmental Authority or private party administrator.

“**Change in Controlling Interest REETAs**” has the meaning set forth in Section 2.06(a)(v).

“**Closing**” has the meaning set forth in Section 2.05.

“**Closing Balance Sheet**” has the meaning set forth in Section 2.04(a)(ii).

“**Closing Date**” has the meaning set forth in Section 2.05.

“**Closing Date Cash**” means the actual Cash and Cash Equivalents of each Target Company determined as of 11:59 p.m. Pacific Time on the Closing Date, determined and applied in accordance with GAAP.

“**Closing Indebtedness**” means the Indebtedness of each Target Company at the time of Closing, which Closing Indebtedness (if any) shall be paid off by the Sellers using transaction proceeds by direct payment from Buyer to the third-party lenders for the Closing Indebtedness, as set forth on the Payoff Letters (if any).

“**Closing Indebtedness Encumbrances**” means Encumbrances arising under or in connection with the Closing Indebtedness, each of which (if any) will be released upon payment in full of the Closing Indebtedness.

“**Closing Payment**” has the meaning set forth in Section 2.03(e)(v).

“**Closing Working Capital**” means: (a) the Current Assets, *less* (b) the Current Liabilities, determined as of 11:59 p.m. Pacific Time on the Closing Date, applied consistently in accordance with the methodologies set forth on Schedule 2.04 attached hereto.

“**Closing Working Capital Deficit**” means the amount, if any, by which the Closing Working Capital is *less than* the Working Capital Target.

“**Closing Working Capital Surplus**” means the amount, if any, by which the Closing Working Capital is *greater than* the Working Capital Target.

“**COBRA**” has the meaning set forth in Section 5.09(c).

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Common Carrier Approvals**” has the meaning set forth in Section 5.05(a).

“**Continuing Employees**” has the meaning set forth in Section 5.09.

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, letters of intent, options, rights of first negotiation, rights of first refusal indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether or not reduced to writing.

“**Conversions**” has the meaning set forth in Exhibit B.

“**Current Assets**” and “**Current Liabilities**” mean, with respect to each Target Company collectively, only those line items set forth on Exhibit H under the headings “current assets” and “current liabilities” and shall be adjusted for any of those line items set forth on Exhibit H under the heading “Definitional Adjustments” and “Other Adjustments”, regardless of whether such line items represent current assets or current liabilities. For the avoidance of doubt, the line-items listed on Exhibit H shall be included in the determination of Closing Working Capital in each case, determined using the methodologies set forth on Schedule 2.04.

“**Customs Laws**” has the meaning set forth in Section 3.18(d)(i).

██

██

██

“**Data Security Incident**” means any actual or reasonably suspected unauthorized access to, acquisition of, loss, alteration, disclosure, deletion or destruction of Third-Party Data, Personal Information or confidential information relating to the Business.

“**Data Site**” means that online data site under the heading of “Project Apple” managed by ██████ and hosted on the Data site platform.

“**Direct Claim**” has the meaning set forth in Section 7.05(c).

“**Disclosure Schedule**” means the disclosure schedule delivered by the Sellers concurrently with the execution and delivery of this Agreement.



“ERISA Affiliate” means, with respect to any Target Company, any other Person that, together with such first Person, would be treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“Escrow Account” has the meaning set forth in Section 2.07(a).

“Escrow Agent” means [REDACTED]

“Escrow Agreement” has the meaning set forth in Section 2.06(a)(v).

[REDACTED]

“Estimated Closing Balance Sheet” has the meaning set forth in Section 2.03(c)(ii).

“Estimated Closing Date Cash” has the meaning set forth in Section 2.03(c)(i)(A).

“Estimated Closing Indebtedness” has the meaning set forth in Section 2.03(c)(i)(B).

“Estimated Closing Statement” has the meaning set forth in Section 2.03(c)(i).

“Estimated Closing Working Capital” has the meaning set forth in Section 2.03(c)(i)(E).

“Estimated Purchase Price” has the meaning set forth in Section 2.03(c)(i)(F).

“Estimated Working Capital Deficit” means Sellers’ estimate of Closing Working Capital that results in an estimated Closing Working Capital Deficit.

“Estimated Working Capital Surplus” means Sellers’ estimate of Closing Working Capital that results in an estimated Closing Working Capital Surplus.

“Estimated Seller Transaction Expenses” has the meaning set forth in Section 2.03(c)(i)(D).

“Excluded Assets” has the meaning set forth in Section 2.01(b).

“Existing Indebtedness” has the meaning set forth in Section 3.14(a).

“FCC” has the meaning set forth in Section 5.05.

“FCC Consent” has the meaning set forth in Section 5.05.

“FCC License” has the meaning set forth in Section 5.05.

“FTAs” has the meaning set forth in Section 3.18(d)(i).

“Final Closing Figures” has the meaning set forth in Section 2.04(c)(iii).

“Final Closing Statement” has the meaning set forth in Section 2.04(a)(i).

“Final Determination” means (a) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final, (b) a “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) with the relevant Taxing Authority or other administrative settlement with or final administrative

decision by the relevant Taxing Authority, (c) a final disposition of a claim for refund, or (d) any agreement between Buyer and Sellers which they agree will have the same effect as an item in (a), (b), or (c) for purposes of this Agreement.

“**Final Purchase Price**” has the meaning set forth in Section 2.04(a)(i)(G).

“**Final Release Date**” has the meaning set forth in Section 7.09(b).

“**Financial Statements**” has the meaning set forth in Section 3.05(a).

“**Flow of Funds**” has the meaning set forth in Section 2.03(e).

“**Fraud**” means actual and intentional common law fraud.

“**Fundamental Reps & Warranties**” has the meaning set forth in Section 7.01.

“**GAAP**” means United States generally accepted accounting principles in effect from time to time, consistently applied, using the same accounting methods, policies, practices, principles, and procedures, with consistent classifications, judgements and estimation methodology as used in the preparation of CBRW’s and CWA’s financial statements for the fiscal year ended December 31, 2024; excluding the lease accounting principles in ASC 842.

“**Governmental Authority**” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is defined as hazardous, acutely hazardous, or toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, toxic molds and polychlorinated biphenyls.

“**Health and Welfare Plans**” has the meaning set forth in Section 5.09(c).

“**Health and Welfare Plans Termination**” has the meaning set forth in Section 5.09(c).

“**Indebtedness**” means (a) indebtedness for borrowed money; (b) indebtedness secured by any Encumbrance on property owned whether or not the indebtedness secured has been assumed; (c) indebtedness evidenced by notes, bonds, debentures, outstanding checks, bankers’ acceptances or similar instruments; (d) “earnouts” and similar payment obligations; (e) advances under factoring agreements; (f) net cash payment obligations under swaps, options, derivatives and other hedging agreements or arrangements that will be payable upon termination thereof (assuming they were terminated on the date of determination); (g) shareholder or member loans, preferred stock and other amounts owing to shareholders in such capacity; (h) [REDACTED]

[REDACTED]

“**Indemnified Party**” has the meaning set forth in Section 7.05(a).

“**Indemnified Taxes**” has the meaning set forth in Section 6.07.

“**Indemnifying Party**” has the meaning set forth in Section 7.05(a).

“**Indemnity Escrow Amount**” has the meaning set forth in Section 7.09(a).

“**Independent Accountant**” [REDACTED]

“**Insurance Policies**” has the meaning set forth in Section 3.16.

“**Intellectual Property**” means any or all Intellectual Property Rights.

“**Intellectual Property Rights**” means all intellectual property and industrial property rights, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether applied for, registered or unregistered, now or hereafter in force or effect including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts and identifiers with social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer; (d) rights of attribution and integrity and other moral rights, and all registrations, applications for registration and renewals of such copyrights; (e) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (f) patents (including all reissues, divisional, provisional, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-

issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); and (g) rights of publicity, personality and privacy.

**"Intended Tax Treatment"** has the meaning set forth in Section 6.01.

**"Interim Balance Sheets"** has the meaning set forth in Section 3.05(c).

**"Interim Balance Sheet Date"** has the meaning set forth in Section 3.05(c).

**"Interim Financial Statements"** has the meaning set forth in Section 3.05(a).

**"ITA"** means any agreement in which any third-party (as served industry) grants to any Target Company (as serving railroad) the right to use or access any privately owned industry railroad tracks for the purpose of providing services to said third-party.

**"IT Systems"** has the meaning set forth in Section 3.13(a).

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**"Lease(s)"** means the *Target Company as Lessee Leases* and *Target Company as Lessor Leases*, collectively.

**"Leased Real Property"** means all real property, buildings, Track, and other real estate improvements (a) that any Target Company is authorized to use or access under a lease agreement in which any Target Company is a lessee or sublessee (but expressly excluding the ITAs), (b) that any Target Company is authorized to use or access under an Operating Agreement, and (c) that any third party is authorized to use or access under a lease agreement in which any Target Company is a lessor or sublessor (but expressly excluding the Real Property Licenses and the Public-Government Agreements).

**"Liabilities"** has the meaning set forth in Section 3.06.

**"Loss"** or **"Losses"** means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, Taxes, awards, penalties, fines, costs or expenses of whatever kind, including attorneys' fees, the costs of investigation and enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that "Losses" shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

**"Made Available"** means posted to the Data Site on or before *one (1) Business Day* prior to the Effective Date.

**"Material Adverse Effect"** means any event, change, circumstance, effect, result or state of facts that is or reasonably is expected to become, individually or in the aggregate, materially adverse to (a) the condition (financial or otherwise), operations, assets, Liabilities, or results of operations of any Target Company, (b) the ability of any of any Target Company to own its assets or conduct its business in the Ordinary Course of Business or (c) the ability of any Seller, Sellers or any Target Company to perform its, his or her obligations under, or consummate the transactions contemplated by, this Agreement and the other Transaction Documents; *provided, however*, that a Material Adverse Effect shall not include any event, change, circumstance, effect or state of facts arising out of or attributable to any of the following: (1) changes affecting generally the industries or markets in which any Target Company operates, (2) changes in general applicable economic conditions or financial markets, (3) changes in applicable Laws, (4)

consequences of natural disasters, hostilities, acts of terrorism or war or other international or national calamity, pandemics (including COVID-19), (5) changes in GAAP or standard accounting principles; (6) any action taken at the written direction of Buyer, (7) any other action expressly required by this Agreement which is conducted in accordance with the terms of this Agreement, or (8) any authorized announcements of, or completion of, the transaction contemplated by this Agreement.

“**Material Contracts**” has the meaning set forth in Section 3.08.

“**Material Customers**” has the meaning set forth in Section 3.15(b).

“**Material Suppliers**” has the meaning set forth in Section 3.15(a).

“**Membership Interests Assignment**” has the meaning set forth in Section 2.06(a)(iii).

“**Net Book Value**” means net book value determined as of the Closing Date in accordance with the Target Companies’ historical financial reporting.

“**OFAC**” has the meaning set forth in Section 3.18(d)(ii).

“**Operating Agreements**” means any written trackage or operating agreement (and all amendments, extensions, renewals, guaranties, and subordination, nondisturbance, and attornment agreements (i.e., SNDAs) with respect thereto) documenting a Track usage arrangement, but expressly excluding all Leases, ITAs, and Real Property Licenses.

“**Operating Agreement Real Property**” means all real property, buildings, Track, and other real estate improvements that any Target Company is authorized to use or access under an Operating Agreement.

“**Ordinary Course of Business**” or any similar term means, with respect to the Business, the ordinary and usual course of day-to-day operations of the Business by each Target Company, consistent with past custom and practice (including with respect to quantity and frequency).

“**Organizational Documents**” means (a) in the case of a Person that is a corporation, its articles or certificate of incorporation and its by-laws or similar governing instruments required by the laws of its jurisdiction of formation or organization; (b) in the case of a Person that is a partnership, its articles or certificate of partnership, formation or association, and its partnership agreement (in each case, limited, limited liability, general or otherwise); (c) in the case of a Person that is a limited liability company, its articles or certificate of formation or organization, and its limited liability company agreement or operating agreement; and (d) in the case of a Person that is none of a corporation, partnership (limited, limited liability, general, or otherwise), limited liability company, or natural person, its governing instruments as required or contemplated by the laws of its jurisdiction of organization.

“**Owned-R/W Real Property**” means all (a) real property, buildings, Track, and other real estate improvements owned by any Target Company and all interests in or appurtenant to said real property, buildings, Track, and other real estate improvements, and (b) real property, buildings, Track, and other real estate improvements any Target Company is authorized to use or access under any right-of-way, easement, or other similar agreement in which real property usage and access rights are granted (but expressly excluding the Leased Real Property and all real property rights granted to the Target Companies under the ITAs and the Public-Government Agreements).



including but not limited to the following, in each case as applicable: the California Consumer Privacy Act of 2018 as amended by the California Privacy Rights Act of 2020 (“CCPA”), the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, state Social Security number protection Laws, data breach notification Laws, consumer protection Laws, and the Payment Card Industry Data Security Standards (PCI-DSS).

“**Privacy Policy**” means any statement by any Target Company relating to the access, collection, processing, use, disclosure, or retention of Personal Information.

“**Privileged Information**” has the meaning set forth in Section 10.13.

“**Public – Governmental Agreement**” means an agreement between a Target Company and a Governmental Authority with respect to easement, improvement, construction and maintenance obligations with respect to a public grade crossing.

“**Purchase Price**” has the meaning set forth in Section 2.03(a).

“**Purchased Equity Interests**” has the meaning set forth in the Recitals.

“**Qualified Benefit Plan**” has the meaning set forth in Section 3.20(a).

“**Railroading Business**” has the meaning set forth in the Recitals.

“**Real Property**” means all Owned-R/W Real Property, Leased Real Property that is leased by any Target Company (as lessee or sublessee) from any third-party (as lessor or sublessor), Operating Agreement Real Property, and all real property rights granted to the Target Companies under the ITAs and the Public-Government Agreements.

“**Real Property License**” means any agreement in which any Target Company (as licensor) grants to any third-party (as licensee) the right to use or access any of the Owned-R/W Real Property or Leased Real Property, which include, but are not limited to, various private crossing licenses, pipeline licenses, and wireline licenses.

“**Related Party Indebtedness**” has the meaning set forth in Section 3.14(a).

“**Related Party Indebtedness Encumbrances**” has the meaning set forth in Section 3.14(a).

“**Related Person**” means, (a) with respect to a particular individual, any (1) Affiliate, (2) spouse or former spouse, (3) natural person who is related to such individual or such individual’s spouse within the second degree, or (4) any other natural person who resides with such individual, and (b) with respect to a specified Person other than an individual, any (1) Affiliate, (2) Person that holds a material interest in such Person, (3) Person that serves as a director, officer, partner, executor, or trustee of such Person (or in a similar capacity), (4) Person in which such Person holds a material interest, (5) Person with respect to which such Person serves as a general partner or a trustee (or in a similar capacity), or (6) any Related Person of any individual described in clause (b)(2) or (b)(3).

“**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing, or allowing to escape or migrate into or through the environment (including, ambient air (indoor or outdoor), surface water,



“**Seller Group**” has the meaning set forth in Section 5.03.

“**Seller Released Party**” has the meaning set forth in Section 7.07(a).

“**Seller Releasing Party**” and “**Seller Releasing Parties**” has the meaning set forth in Section 7.07(a).

“**Sellers’ Knowledge**” or any other similar knowledge qualifier, means the actual knowledge, after reasonable due inquiry, of each of [REDACTED]

“**Sellers’ Legal Advisors**” has the meaning set forth in Section 10.13.

“**Sellers’ Financial Advisors**” has the meaning set forth in Section 10.13.

“**Shareholders**” has the meaning set forth in the Preamble.

“**Statement of Objections**” has the meaning set forth in Section 2.04(c)(i).

“**Specific Indemnity Escrow Amount**” has the meaning set forth in Section 7.09(c).

“**Specific Indemnity Release Date**” has the meaning set forth in Section 7.09(d).

“**STB**” means the Surface Transportation Board.

“**Straddle Period**” has the meaning set forth in Section 6.04.

“**Survival Date**” has the meaning set forth in Section 7.01.

“**Target Company**” and “**Target Companies**” have the meaning set forth in the Recitals.

“**Target Company as Lessee Lease(s)**” has the meaning set forth in Section 3.10(a)(ii).

“**Target Company as Lessor Lease(s)**” has the meaning set forth in Section 3.10(a)(iii).

“**Tax**” or “**Taxes**” means (a) all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all income, imputed underpayment, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment related tax (including employee withholding or employer payroll tax or Federal Insurance Contributions Act tax), social security, unemployment, production, capital gains, goods and services, alternative or add-on minimum, environmental, excise, unclaimed or abandoned property, escheat and similar, severance, stamp, occupation, property and estimated taxes, withholding or backup withholding, imputed underpayment, severance tax, customs duties, fees, Railroad Retirement Act obligations, Railroad Unemployment Insurance Act obligations, and any other governmental charges in the nature of taxes imposed by a Taxing Authority; (b) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items described in this definition and (c) any items described in this definition that are attributable to another Person but that any Target Company is liable to pay by operation of Law, by contract or otherwise, whether or not disputed.

“**Taxing Authority**” means the United States Internal Revenue Service and any other Governmental Authority (and any subdivision, agency or authority thereof) responsible for the administration, collection or imposition of any Tax.





EXHIBIT B

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

EXHIBIT C-1

[REDACTED]

<p>[REDACTED]</p>	<p>[REDACTED]</p>

[Redacted]

[Redacted]	[Redacted]

[REDACTED]

[REDACTED]

<p>[REDACTED]</p>	<p>[REDACTED]</p>

**EXHIBIT D-1**

**ASSIGNMENT OF MEMBERSHIP INTERESTS** ██████████

[See Attached]

**ASSIGNMENT OF MEMBERSHIP INTEREST**

**EFFECTIVE DATE:** \_\_\_\_\_, 2025

**PARTIES:**

\_\_\_\_\_  
\_\_\_\_\_  
(referred to in this Assignment as an "Assignor")

\_\_\_\_\_  
\_\_\_\_\_  
(referred to in this Assignment as "Assignee")

**SUBJECT COMPANY.** The term "Subject Company," when used in this Assignment, means and refers to \_\_\_\_\_

**SUBJECT MEMBERSHIP INTEREST.** The term "Subject Membership Interest," when used in this Assignment, means and refers to *one thousand (1,000) Units* in the Subject Company, which comprises *one hundred percent (100%)* of the issued and outstanding Equity Interests in the Subject Company.

**ASSIGNMENT AND TRANSFER.** For good and valuable consideration, Assignor hereby transfers, assigns, and delivers to Assignee all of the Subject Membership Interest.

The foregoing conveyance, transfer, and assignment is made in accordance with the terms of that certain Unit Purchase Agreement (the "Purchase Agreement"), dated as of \_\_\_\_\_, by and between Assignor, Assignee, and certain other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

This Assignment may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this Assignment and the counterparts had signed the same document. All executed counterparts of this Assignment will be construed as and constitute one and the same instrument. A facsimile or electronic copy (*e.g.*, a PDF copy) of an executed counterpart of this Assignment will have the same effect as an original executed counterpart of this Assignment. Further, this Assignment may be executed by electronic means (*e.g.*, via DocuSign or some other similar electronic signature service).

EXECUTED effective as of the Effective Date first written above.

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT D-2**

**ASSIGNMENT OF MEMBERSHIP INTERESTS** [REDACTED]

[See Attached]

**ASSIGNMENT OF MEMBERSHIP INTEREST**

**EFFECTIVE DATE:** \_\_\_\_\_, 2025

**PARTIES:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SUBJECT COMPANY.** The term “*Subject Company*,” when used in this Assignment, means and refers to \_\_\_\_\_  
\_\_\_\_\_

**SUBJECT MEMBERSHIP INTEREST.** The term “*Subject Membership Interest*,” when used in this Assignment, means and refers to *one thousand (1,000) Units* in the Subject Company, which comprises *one hundred percent (100%)* of the issued and outstanding Equity Interests in the Subject Company.

**ASSIGNMENT AND TRANSFER.** For good and valuable consideration, Assignor hereby transfers, assigns, and delivers to Assignee all of the Subject Membership Interest.

The foregoing conveyance, transfer, and assignment is made in accordance with the terms of that certain Unit Purchase Agreement (the “*Purchase Agreement*”), dated as of \_\_\_\_\_ by and between Assignor, Assignee, and certain other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

This Assignment may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this Assignment and the counterparts had signed the same document. All executed counterparts of this Assignment will be construed as and constitute one and the same instrument. A facsimile or electronic copy (*e.g.*, a PDF copy) of an executed counterpart of this Assignment will have the same effect as an original executed counterpart of this Assignment. Further, this Assignment may be executed by electronic means (*e.g.*, via DocuSign or some other similar electronic signature service).

EXECUTED effective as of the Effective Date first written above.

**CWA HOLDINGS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT D-3**

**ASSIGNMENT OF MEMBERSHIP INTERESTS** 

[See Attached]

**ASSIGNMENT OF MEMBERSHIP INTEREST**

**EFFECTIVE DATE:** \_\_\_\_\_, 2025

**PARTIES:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SUBJECT COMPANY.** The term “*Subject Company*,” when used in this Assignment, means and refers to \_\_\_\_\_

**SUBJECT MEMBERSHIP INTEREST.** The term “*Subject Membership Interest*,” when used in this Assignment, means and refers to *one thousand (1,000) Units* in the Subject Company, which comprises *one hundred percent (100%)* of the issued and outstanding Equity Interests in the Subject Company.

**ASSIGNMENT AND TRANSFER.** For good and valuable consideration, Assignor hereby transfers, assigns, and delivers to Assignee all of the Subject Membership Interest.

The foregoing conveyance, transfer, and assignment is made in accordance with the terms of that certain Unit Purchase Agreement (the “*Purchase Agreement*”), dated as of \_\_\_\_\_, by and between Assignor, Assignee, and certain other parties thereto. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

This Assignment may be executed in any number of identical counterparts, with each counterpart having the effect as if all parties to this Assignment and the counterparts had signed the same document. All executed counterparts of this Assignment will be construed as and constitute one and the same instrument. A facsimile or electronic copy (e.g., a PDF copy) of an executed counterpart of this Assignment will have the same effect as an original executed counterpart of this Assignment. Further, this Assignment may be executed by electronic means (e.g., via DocuSign or some other similar electronic signature service).

EXECUTED effective as of the Effective Date first written above.

**PACSTAN HOLDINGS, INC.**

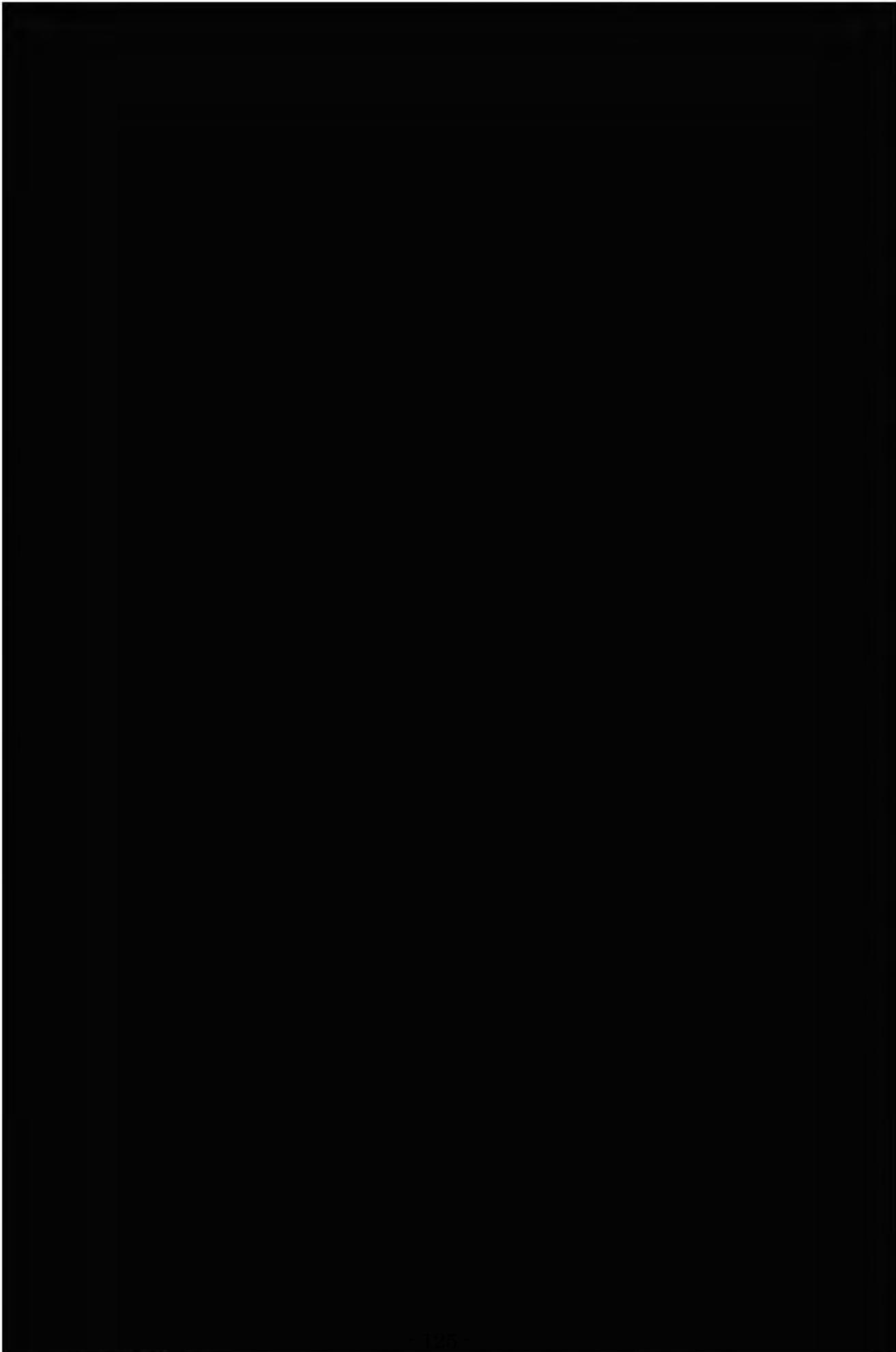
By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT E-1**

**CHANGE IN CONTROLLING INTEREST REAL ESTATE EXCISE TAX AFFIDAVIT** 

[See Attached]

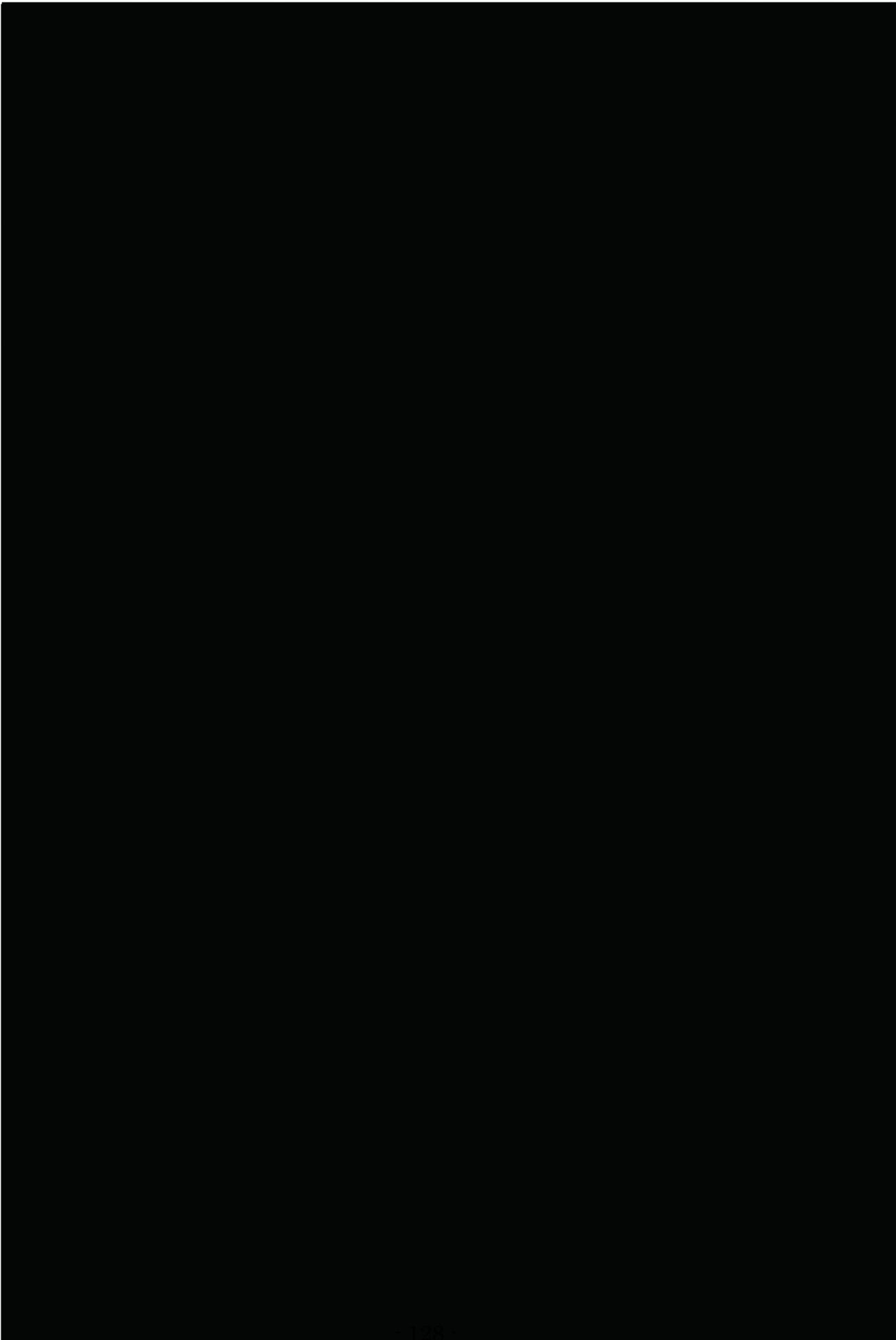




**EXHIBIT E-2**

**CHANGE IN CONTROLLING INTEREST REAL ESTATE EXCISE TAX AFFIDAVIT [REDACTED]**

[See Attached]





**EXHIBIT F**

**ESCROW AGREEMENT**

[See Attached]

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated effective as of \_\_\_\_\_, 2025 (“Agreement”), is by and among \_\_\_\_\_

### BACKGROUND

A. Buyer, Sellers, and certain other parties thereto have entered into a Unit Purchase Agreement (the “Purchase Agreement”), dated as \_\_\_\_\_ pursuant to which Buyer is purchasing all the Purchased Equity Interests (as such term is defined in the Purchase Agreement). The Purchase Agreement provides that Buyer shall deposit on behalf of Sellers the Escrow Funds (defined below) in a segregated escrow account to be held by Escrow Agent for the purpose of working capital adjustments and/or indemnification obligations that may become due to Buyer pursuant to the Purchase Agreement.

B. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it and any earnings thereon in accordance with the terms of this Agreement.

C. Buyer and Sellers have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Escrow Agent and this Agreement.

D. Buyer and Sellers acknowledge that (i) Escrow Agent is not a party to and has no duties or obligations under the Purchase Agreement, (ii) all references in this Agreement to the Purchase Agreement are solely for the convenience of Buyer and Seller, and (iii) Escrow Agent shall have no implied duties beyond the express duties set forth in this Agreement.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

“Business Day” means any day, other than a Saturday, Sunday or legal holiday, on which Escrow Agent at its location identified in Section 16 is open to the public for general banking purposes.

“Claim Notice” has the meaning set forth in Section 6(a).

“Escrow Funds” means the funds deposited with Escrow Agent pursuant to Section 3 of this Agreement, together with any interest and other income thereon.

“Escrow Period” means the period commencing on the date hereof and ending at the close of Escrow Agent’s Business Day on the Release Date unless earlier terminated pursuant to this Agreement.

“Final Order” means a final and nonappealable order of a court of competent jurisdiction (an “Order”), which Order is delivered to Escrow Agent accompanied by a written instruction from Buyer Representative or Seller Representative given to effectuate such Order and confirming that such Order is final, nonappealable and issued by a court of competent jurisdiction, and Escrow Agent shall be entitled to

conclusively rely upon any such confirmation and instruction and shall have no responsibility to review the Order to which such confirmation and instruction refers.

“Indemnified Party” has the meaning set forth in Section 12.

“Indemnity Claim” has the meaning set forth in Section 6(a).

“Joint Written Direction” means a written direction executed by a Buyer Representative and a Seller Representative, delivered to Escrow Agent in accordance with Section 16 and directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking any other action pursuant to this Agreement.

“Buyer Representative” means the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Buyer and delivered to Escrow Agent and a Seller Representative in accordance with the notice provisions of this Agreement, to act as its representative under this Agreement.

“Release Date” means [insert the date that is 18-months after the Closing Date].

“Representatives” means a Buyer Representative and a Seller Representative.

“Seller Representative” means the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Sellers and delivered to Escrow Agent and a Buyer Representative in accordance with the notice provisions of this Agreement, to act as its representative under this Agreement.

2. Appointment of and Acceptance by Escrow Agent. Buyer and Sellers hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3, shall hold, invest and disburse the Escrow Funds in accordance with this Agreement.

3. Deposit of Escrow Funds. Simultaneously with the execution and delivery of this Agreement, Buyer will transfer (a) escrow funds in the amount of [REDACTED] by wire transfer of immediately available funds, to an account designated by Escrow Agent [REDACTED]. Escrow Funds will remain uninvested except as provided in Section 7.

4. Disbursements of Escrow Funds.

(a) Escrow Agent shall disburse Escrow Funds [REDACTED]

(b) Upon the expiration of the Escrow Period, Escrow Agent shall distribute to Sellers, in accordance with Sellers' respective pro rata percentages and funds transfer instructions set forth on Attachment 2, as promptly as practicable, any remaining Escrow Funds not subject to a Claim Notice as provided in Section 6. Purchaser and Sellers each acknowledge that Escrow Agent is authorized to use the funds transfer instructions set forth in Attachment 2 to disburse any funds due to Sellers under this Section 4(b).

(c) Prior to any disbursement, Escrow Agent must receive reasonable identifying information regarding the recipient so that Escrow Agent is able to comply with its regulatory obligations and reasonable business practices, including without limitation a completed United States Internal Revenue Service ("IRS") Form W-9 or Form W-8, as applicable. All disbursements of Escrow Funds will be subject to the fees and claims of Escrow Agent and the Indemnified Parties pursuant to Section 12 and Section 13.

(d) Buyer and Sellers may each deliver written notice to Escrow Agent in accordance with Section 16 changing their respective funds transfer instructions, which notice will be effective only upon receipt by Escrow Agent and after Escrow Agent has had reasonable time to act upon such notice.

(e) Notwithstanding any other provision of this Agreement, Escrow Agent is authorized to disburse Escrow Funds pursuant to a Final Order.

5. Suspension of Performance; Disbursement into Court. If, at any time, (a) a dispute exists with respect to any obligation of Escrow Agent under this Agreement, (b) Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, Escrow Agent's proper actions with respect to its obligations hereunder, or (c) the Representatives have not, within 10 days of receipt of a notice of resignation, appointed a successor escrow agent to act under this Agreement, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

(i) suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Agreement until such dispute or uncertainty is resolved to the sole satisfaction of Escrow Agent or until a successor escrow agent is appointed.

(ii) petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty and, to the extent required or permitted by law, pay into such court, for holding and disposition by such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Agent will have no liability to Buyer or Sellers for any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise due to any delay in any other action required or requested of Escrow Agent.

6. Resolutions & Disbursement of Claims. If during the Escrow Period Buyer elects to make a claim for indemnity against Sellers, then the procedure for administering and resolving such claims is as follows:

(a) If Buyer elects to assert a claim for indemnity as contemplated by the Purchase Agreement (an "Indemnity Claim"), it must give written notice of such claim (a "Claim Notice") to Escrow Agent and Sellers prior to the expiration of the Escrow Period. Such Claim Notice must include a description of the claim and the basis therefor and the amount, if known, asserted by Buyer for such claim (including, if

appropriate, an estimate of all costs and expenses reasonably expected to be incurred by Buyer by reason of such claim).

(b) Escrow Agent shall pay an Indemnity Claim to Buyer from the Escrow Funds only pursuant to (i) Sellers' written direction, (ii) a Joint Written Direction or (iii) a Final Order.

7. Investment of Funds. Based upon Buyer's and Sellers' prior review of investment alternatives, in the absence of further specific written direction to the contrary at any time that an investment decision must be made, Escrow Agent is directed to invest and reinvest the Escrow Funds in the investment identified in Schedule A. If applicable, Buyer and Sellers acknowledge receipt from Escrow Agent of a current copy of the prospectus for the investment identified in Schedule A. Buyer and Sellers may deliver to Escrow Agent a Joint Written Direction changing the investment of the Escrow Funds, upon which direction Escrow Agent may conclusively rely without inquiry or investigation; provided, however, that Buyer and Sellers warrant that no investment or reinvestment direction will be given except in the following: (a) direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America; (b) U.S. dollar denominated deposit accounts and certificates of deposit issued by any bank, bank and trust company, or national banking association (including Escrow Agent and its affiliates), which are either (i) insured by the Federal Deposit Insurance Corporation ("FDIC") up to FDIC limits, or (ii) with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of at least "A-1" by S&P or "P-1" by Moody's (ratings on holding companies are not considered as the rating of the bank); or (c) money market funds, including funds managed by Escrow Agent or any of its affiliates; provided further, however, that Escrow Agent will not be directed to invest in investments that Escrow Agent determines are not consistent with Escrow Agent's policies or practices. Buyer and Sellers recognize and agree that Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of Escrow Funds or the purchase or disposition of any investment and Escrow Agent will not have any liability for any loss in an investment made pursuant to the terms of this Agreement. Escrow Agent has no responsibility whatsoever to determine the market or other value of any investment and makes no representation or warranty as to the accuracy of any such valuations. To the extent applicable regulations grant rights to receive brokerage confirmations for certain security transactions, Buyer and Sellers waive receipt of such confirmations.

All investments will be made in the name of Escrow Agent. Escrow Agent may, without notice to Buyer and Sellers, sell or liquidate any of the foregoing investments at any time for any disbursement of Escrow Funds permitted or required hereunder and will not be liable for any loss, cost or penalty resulting from any sale or liquidation of any such investment. All investment earnings will become part of the Escrow Funds and investment losses will be charged against the Escrow Funds. With respect to any Escrow Funds or investment instruction received by Escrow Agent after 11:00 a.m., U.S. Central Time, Escrow Agent will not be required to invest applicable funds until the next Business Day.

8. Statements. Receipt of the Escrow Funds and investment and reinvestment of the Escrow Funds will be confirmed by Escrow Agent by an account statement. Escrow Agent will deliver monthly account statements to Buyer and Sellers in accordance with Section 16. Unless otherwise agreed to in writing by Escrow Agent, account statements will be effectively delivered when made available through Escrow Agent's online portal system ("Pivot"). Failure to inform Escrow Agent in writing of any error or omission in any such account statement within ninety (90) days after receipt will conclusively be deemed confirmation and approval by Buyer and Sellers of such account statement.

9. Tax Reporting.

(a) Escrow Agent has no responsibility for the tax consequences of this Agreement and Buyer and Sellers shall consult with independent counsel concerning any and all tax matters. Buyer and Sellers

jointly and severally agree to (i) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Agreement and (ii) request and direct Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations. Except as otherwise agreed by Escrow Agent in writing, Escrow Agent has no tax reporting or withholding obligation except to the Internal Revenue Service with respect to Form 1099-B reporting on payments of gross proceeds under Internal Revenue Code Section 6045 and Form 1099 and Form 1042-S reporting with respect to investment income earned on the Escrow Funds, if any. Escrow Agent shall have no responsibility for Form 1099-MISC reporting with respect to disbursements that Escrow Agent makes in an administrative or ministerial function to vendors or other service providers and shall have no tax reporting or withholding duties with respect to the Foreign Investment in Real Property Tax Act (FIRPTA).

(b) To the extent that U.S. federal imputed interest regulations apply, Buyer and Sellers shall so inform Escrow Agent, provide Escrow Agent with all imputed interest calculations and direct Escrow Agent to disburse imputed interest amounts as Buyer and Sellers deem appropriate. Escrow Agent will rely solely on such provided calculations and information and will have no responsibility for the accuracy or completeness of any such calculations or information. Buyer and Sellers shall provide Escrow Agent a properly completed IRS Form W-9 or Form W-8, as applicable, for each payee. If requested tax documentation is not so provided, Escrow Agent is authorized to withhold taxes as required by the United States Internal Revenue Code and related regulations.

(c) Except as otherwise directed by Buyer and Sellers in writing, Escrow Agent will report on an accrual basis, all interest or income on the Escrow Funds as being owned by Sellers for federal income tax purposes, and Sellers shall report the income, if any, that is earned on, or derived from, the Escrow Funds as its income, in the taxable year or years in which such income is properly includible and pay any taxes attributable thereto. For the avoidance of doubt, Sellers' pro rata percentages of the ownership of the Escrow Funds and all interest or income thereon are set forth on Attachment 2. If any accrued interest income attributed to Sellers is subsequently disbursed by Escrow Agent to Buyer, Buyer and Sellers shall jointly direct Escrow Agent in writing with respect to the appropriate tax treatment and reporting of such disbursements.

(d) Sellers, jointly and severally, agree to indemnify, defend and hold Escrow Agent and Buyer harmless from and against any tax, late payment, interest on any tax, tax penalty or other cost or expense that may be assessed against Escrow Agent on or with respect to the Escrow Funds and the investment thereof. The indemnification provided by this Section 9(d) is in addition to the indemnification provided in Section 12 and shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement.

10. Resignation or Removal of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving ten (10) days' prior written notice to Buyer and Sellers specifying a date when such resignation will take effect and, after the date of such resignation notice, notwithstanding any other provision of this Agreement, Escrow Agent's sole obligation will be to hold the Escrow Funds pending appointment of a successor Escrow Agent. Similarly, Escrow Agent may be removed at any time by Buyer and Sellers giving at least thirty (30) days' prior written notice to Escrow Agent specifying the date when such removal will take effect. If Buyer and Sellers fail to jointly appoint a successor Escrow Agent prior to the effective date of such resignation or removal, Escrow Agent may petition a court of competent jurisdiction to appoint a successor escrow agent, and all costs and expenses related to such petition shall be paid jointly and severally by Buyer and Sellers. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems

advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Escrow Agent's resignation or removal, the provisions of this Agreement will inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Agreement.

11. Duties and Liability of Escrow Agent.

(a) Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties will be implied. Escrow Agent has no fiduciary or discretionary duties of any kind. Escrow Agent's permissive rights will not be construed as duties. Escrow Agent has no liability under and no duty to inquire as to the provisions of any document other than this Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to Escrow Agent. Escrow Agent's sole responsibility is to hold the Escrow Funds in accordance with Escrow Agent's customary practices and disbursement thereof in accordance with the terms of this Agreement. Escrow Agent shall not be responsible for or have any duty to make any calculations under this Agreement, or to determine when any calculation required under the provisions of this Agreement should be made, how it should be made or what it should be, or to confirm or verify any such calculation. Escrow Agent will not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. This Agreement will terminate upon the distribution of all the Escrow Funds pursuant to any applicable provision of this Agreement, and Escrow Agent will thereafter have no further obligation or liability whatsoever with respect to this Agreement or the Escrow Funds.

(b) Escrow Agent will not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines, which determination is not subject to appeal, that Escrow Agent's gross negligence or willful misconduct in connection with its material breach of this Agreement was the cause of any loss to Buyer or Sellers. Escrow Agent may retain and act hereunder through agents, and will not be responsible for or have any liability with respect to the acts of any such agent retained by Escrow Agent in good faith (except to the extent arising out of Escrow Agent's gross negligence or willful misconduct).

(c) Escrow Agent may conclusively rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent believes to be genuine and to have been signed or presented by the person purporting to sign it and shall have no responsibility or duty to make inquiry as to or to determine the truth, accuracy or validity thereof (or any signature appearing thereon). In no event will Escrow Agent be liable for (i) acting in accordance with or conclusively relying upon any instruction, notice, demand, certificate or document believed by Escrow Agent to have been created by or on behalf of Buyer or Sellers, (ii) incidental, indirect, special, consequential or punitive damages or penalties of any kind (including, but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action or (iii) any amount greater than the value of the Escrow Funds as valued upon deposit with Escrow Agent.

(d) Escrow Agent will not be responsible for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, attacks or intrusions, power failures, earthquakes or any other circumstance beyond its control. Escrow Agent will not be obligated to take any legal action in connection with the Escrow Funds, this Agreement or the Purchase Agreement or to appear in, prosecute or defend any such legal action or to take any other action that in Escrow Agent's sole judgment may expose it to potential expense or liability. Buyer and Sellers are aware that under applicable state law, property

which is presumed abandoned may under certain circumstances escheat to the applicable state. Escrow Agent will have no liability to Buyer or Sellers, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Funds escheat by operation of law.

(e) Escrow Agent may consult, at Buyer's and Sellers' cost, legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving this Agreement, and will incur no liability and must be fully indemnified from any liability whatsoever in acting in accordance with the advice of such counsel. Buyer and Sellers agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request in connection with its duties hereunder. When any action is provided for herein to be done on or by a specified date that falls on a day other than a Business Day, such action may be performed on the following Business Day.

(f) If any portion of the Escrow Funds is at any time attached, garnished or levied upon, or otherwise subject to any writ, order, decree or process of any court, or in case disbursement of Escrow Funds is stayed or enjoined by any court order, Escrow Agent is authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders, decrees or process so entered or issued, whether with or without jurisdiction; and if Escrow Agent relies upon or complies with any such writ, order, decree or process, it will not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even if such order is reversed, modified, annulled, set aside or vacated.

(g) Escrow Agent and any stockholder, director, officer or employee of Escrow Agent may buy, sell and deal in any of the securities of any other party hereto and contract and lend money to any other party hereto and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein will preclude Escrow Agent from acting in any other capacity for any other party hereto or for any other person or entity.

(h) In the event instructions, including funds transfer instructions, address change or change in contact information are given to Escrow Agent (other than in writing at the time of execution of this Agreement), whether in writing, by electronic delivery or otherwise, Escrow Agent is authorized, but not required, to seek confirmation of such instructions by telephone call-back to any person designated by the instructing party on Schedule C hereto, and Escrow Agent may rely upon the confirmation of anyone purporting to be the person so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and will be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If Escrow Agent is unable to contact any of the designated representatives identified in Schedule C, Escrow Agent is hereby authorized but will be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Buyer's or Sellers' executive officers ("Executive Officers"), as the case may be, which will include the titles of Chief Executive Officer, President and Vice President, as Escrow Agent may select. Such Executive Officer must deliver to Escrow Agent a fully executed incumbency certificate, and Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Buyer and Sellers agree that Escrow Agent may at its option record any telephone calls made pursuant to this Section. Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Buyer or Sellers to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank, even when its use may result in a transfer of funds to a person other than the intended beneficiary or to a bank other than the intended beneficiary's bank or intermediary bank. Buyer and Sellers acknowledge that these optional security procedures are commercially reasonable.

12. Indemnification of Escrow Agent.

(a) Other than with respect to matters covered by Section 9(d), which are exclusively governed by such section, Buyer and Sellers, jointly and severally, shall indemnify and hold harmless Escrow Agent and each director, officer, employee and affiliate of Escrow Agent (each, an “Indemnified Party”) upon demand against any and all claims, actions and proceedings (whether asserted or commenced by Buyer, Sellers or any other person or entity and whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys’ fees, costs and expenses) (collectively, “Losses”) arising from this Agreement or Escrow Agent’s actions hereunder, except to the extent such Losses are finally determined by a court of competent jurisdiction, which determination is not subject to appeal, to have been directly caused by the gross negligence or willful misconduct of such Indemnified Party in connection with Escrow Agent’s material breach of this Agreement. Buyer and Sellers further agree, jointly and severally, to indemnify each Indemnified Party for all costs, including without limitation, reasonable attorneys’ fees, incurred by such Indemnified Party in connection with the enforcement of Buyer’s and Sellers’ obligations to Escrow Agent under this Agreement. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by Buyer and Sellers jointly and severally.

(b) Notwithstanding anything to the contrary herein, Buyer and Sellers agree, solely as between themselves, that (i) any obligation for indemnification under this Section 12 (or for reasonable fees and expenses of the Escrow Agent described in Section 13(a)) shall be borne 100% by the party or parties determined by a court of competent jurisdiction to be responsible for causing the Indemnified Party’s Losses against which the Indemnified Party is entitled to indemnification or, if no such determination is made, then fifty percent (50%) by Buyer, on one hand, and fifty percent (50%) by Sellers, on the other hand, and (ii) each party shall be entitled to reimbursement from the other party to the extent the amount of such indemnification obligations are obligations of such other party.

(c) The obligations of Buyer and Sellers under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

### 13. Compensation of Escrow Agent.

(a) Fees and Expenses. Buyer and Sellers agree, jointly and severally, to compensate Escrow Agent upon demand for its services hereunder in accordance with Schedule B attached hereto. Without limiting the joint and several nature of their obligations to Escrow Agent, Buyer, and Sellers agree between themselves that each will be responsible to the other for one-half of Escrow Agent’s compensation. The obligations of Buyer and Sellers under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

(b) Disbursements from Escrow Funds to Pay Escrow Agent. Escrow Agent is authorized to, and may disburse to itself from the Escrow Funds, from time to time, the amount of any compensation and reimbursement of expenses due and payable hereunder (including any amount to which Escrow Agent or any other Indemnified Party is entitled to seek indemnification hereunder). Escrow Agent shall notify Buyer and Sellers of any such disbursement from the Escrow Funds to itself or any other Indemnified Party and shall furnish Buyer and Sellers copies of related invoices and other statements.

(c) Security and Offset. Buyer and Sellers hereby grant to Escrow Agent and the other Indemnified Parties a first priority security interest in, lien upon and right of sale and offset against the Escrow Funds with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the Escrow Funds are insufficient to cover such compensation and reimbursement, Buyer and Sellers shall promptly pay such amounts upon receipt of an itemized invoice.

14. Representations and Warranties. Buyer and Sellers each respectively make the following representations and warranties to Escrow Agent:

(a) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and this Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms.

(b) each of the applicable persons designated (i) on Schedule C attached hereto has been duly appointed to act as its authorized representative hereunder and individually has full power and authority on its behalf to execute and deliver any instruction or direction, to amend, modify or waive any provision of this Agreement and to take any and all other actions as its authorized representative under this Agreement and (ii) on Schedule C attached hereto has been granted access to Pivot on its behalf. Any change to such designations will not be effective until, in the case of Schedule C, written notice of such change is delivered to each other party to this Agreement pursuant to Section 16 and Escrow Agent has had reasonable time to act upon it and, in the case of Schedule C, written notice of such change is delivered by the respective party requesting the change to Escrow Agent pursuant to Section 16 and Escrow Agent has had reasonable time to act upon it.

(c) the execution, delivery and performance of this Agreement by Escrow Agent does not and will not violate any applicable law or regulation and no printed or other material in any language, including any prospectus, notice, report, and promotional material that mentions ██████████ or any of its affiliates by name or the rights, powers, or duties of Escrow Agent under this Agreement will be issued by any other parties hereto, or on such party's behalf, without the prior written consent of Escrow Agent.

(d) it will not claim any immunity from jurisdiction of any court, suit or legal process, whether from service of notice, injunction, attachment, execution or enforcement of any judgment or otherwise.

(e) there is no security interest in the Escrow Funds or any part thereof and no financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Escrow Funds or any part thereof. In addition, the Seller Representatives represent and warrant to Escrow Agent that they collectively have the irrevocable right, power, and authority (i) to enter into and perform this Agreement on behalf of the Sellers and to bind all of the Sellers to its terms; (ii) to give and receive directions and notices hereunder; and (iii) to make all determinations that may be required or that they collectively deem appropriate under this Agreement.

15. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, Escrow Agent requires documentation to verify its formation and existence as a legal entity. Escrow Agent may require financial statements, licenses or identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Buyer and Sellers agree to provide all information requested by Escrow Agent in connection with any legislation or regulation to which Escrow Agent is subject, in a timely manner. Escrow Agent's appointment and acceptance of its duties under this Agreement is contingent upon verification of all regulatory requirements applicable to Buyer, Sellers and any of their permitted assigns, including successful completion of a final background check. These conditions include, without limitation, requirements under the USA PATRIOT Act, the USA FREEDOM Act, the Bank Secrecy Act, and the U.S. Department of the Treasury Office of Foreign Assets Control. If these conditions are not met, Escrow Agent may at its option promptly terminate this Agreement in whole or in part and refuse any otherwise permitted assignment by Buyer or Sellers, without any liability or incurring any additional costs.

16. Notices. All notices, approvals, consents, requests and other communications hereunder (each, a "Notice") must be in writing, in English, and may only be delivered (a) by personal delivery, or (b) by national overnight courier service, or (c) by certified or registered mail, return receipt requested, or (d) by facsimile transmission, with confirmed receipt, or (e) by email. Notice will be effective upon receipt except for notice via email, which will be effective only when the recipient, by return email or notice delivered by other method provided for in this Section, acknowledges having received that email (with an automatically generated receipt or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section). Notices may only be sent to the applicable party or parties at the address specified below:

If to Buyer, at:

[REDACTED]

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

[REDACTED]

If to Sellers, at:

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

If to Escrow Agent, at:

[REDACTED]

[REDACTED]  
[REDACTED]

and to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein will be deemed to have been given on the date received. Escrow Agent shall not have any duty to confirm that the person sending any Notice by electronic transmission (including by e-mail, facsimile transmission, web portal, or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by Escrow Agent to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to Escrow Agent) shall be deemed original signatures for all purposes. Notwithstanding the foregoing, Escrow Agent may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to Escrow Agent in lieu of, or in addition to, any such electronic Notice. Buyer and Sellers agree to assume all risks arising out of the use of electronic signatures and electronic methods to submit instructions and directions to Escrow Agent, including without limitation the risk of Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

17. Amendment and Assignment. None of the terms or conditions of this Agreement may be changed, waived, modified, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Agreement. No course of conduct will constitute a waiver of any of the terms and conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. No party may assign this Agreement or any of its rights or obligations hereunder without the written consent of the other parties, provided that if Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Agreement) to another entity, the successor or transferee entity without any further act will be the successor Escrow Agent.

18. Governing Law, Jurisdiction and Venue. This Agreement must be construed and interpreted in accordance with the internal laws of the State of Delaware without giving effect to the conflict of laws principles thereof that would require the application of any other laws. Each of the parties hereto irrevocably (a) consents to the exclusive jurisdiction and venue of the state and federal courts in the State of Washington in connection with any matter arising out of this Agreement, (b) waives any objection to such jurisdiction or venue (c) agrees not to commence any legal proceedings related hereto except in such courts (d) consents to and agrees to accept service of process to vest personal jurisdiction over it in any such courts set forth in this Section, and (e) waives any right to trial by jury in any action in connection with this Agreement.

19. Entire Agreement, No Third-Party Beneficiaries. This Agreement constitutes the entire agreement between the signatory parties hereto relating to the holding, investment and disbursement of Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to Escrow Funds. This Agreement and any Joint Written Direction may be executed in two or more counterparts, which when so executed will constitute one and the same agreement or direction. To the extent any provision of this Agreement is prohibited by or invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such

provision or the remaining provisions of this Agreement. The Section headings have been inserted for convenience only and will be given no substantive meaning or significance whatsoever in construing the terms and conditions of this Agreement. Nothing in this Agreement, express or implied, is intended to or will confer upon any person other than the signatory parties hereto and the Indemnified Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[signature page follows]



**SCHEDULE A**

[REDACTED]

**MONEY MARKET DEPOSIT ACCOUNT AUTHORIZATION FORM**

**DESCRIPTION AND TERMS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**AUTOMATIC AUTHORIZATION**

[REDACTED]

**SCHEDULE B**

**Schedule of Fees for Services as Escrow Agent**

[See Attached]



ATTACHMENT 1

FORM OF JOINT WRITTEN DIRECTION

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: ESCROW AGREEMENT made and entered into as of \_\_\_\_\_, 2025 is by and among [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] as  
escrow agent hereunder ("Escrow Agent").

Pursuant to Section 4 of the above-referenced Escrow Agreement, Buyer and Sellers hereby instruct Escrow Agent to disburse the amount of [\$ \_\_\_\_] from the Escrow Account to [Buyer][Seller(s)], as provided below:

Buyer

Sellers

Bank Name: \_\_\_\_\_  
Bank Address: \_\_\_\_\_  
ABA No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_

Bank Name: \_\_\_\_\_  
Bank Address: \_\_\_\_\_  
ABA No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_

**BUYER:**

**SELLERS:**

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: Buyer Representative

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: Seller Representative

By: \_\_\_\_\_  
Name: [REDACTED]  
Title: Seller Representative

**ATTACHMENT 2**

**INSTRUCTIONS FOR DISBURSEMENT OF FUNDS**

In accordance with Section 4(b) of the Escrow Agreement, Escrow Agent shall distribute an amount to each of the separate Sellers using their respective wire instructions indicated below equal to: (a) the amount of disbursed Escrow Funds, multiplied by (b) the percentage identified opposite each such recipient's name:

Recipient	Percentage
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**Wire Instructions:**

<p>[REDACTED]                      [Bank]                      [Address]                      Routing: _____                      Account Name: _____                      Account Number: _____                      For further credit to: _____</p>	<p>[REDACTED]                      [Bank]                      [Address]                      Routing: _____                      Account Name: _____                      Account Number: _____                      For further credit to: _____</p>
<p>[REDACTED]                      [Bank]                      [Address]                      Routing: _____                      Account Name: _____                      Account Number: _____                      For further credit to: _____</p>	

**EXHIBIT G**

**RESIGNATION NOTICE**

[See Attached]

# RESIGNATION NOTICE

EFFECTIVE DATE: \_\_\_\_\_, 2025

The undersigned parties hereby resign from all director, officer, manager, registered agent, and benefit plan trustee positions (if any) with and for each of the following companies:

- [REDACTED]
- [REDACTED]
- [REDACTED]

This Notice may be executed in any number of identical counterparts, with each counterpart having the same effect as if all parties to this Notice had signed the same document. All executed counterparts of this Notice will be construed as and constitute one and the same instrument. A facsimile or electronic copy (*e.g.*, a PDF copy) of an executed counterpart of this Notice will have the same effect as an original executed counterpart of this Notice. Further, this Notice may be executed by electronic means (*e.g.*, via DocuSign or some similar electronic signature service).

EXECUTED effective as of the Effective Date first stated above.

\_\_\_\_\_  
[REDACTED]

\_\_\_\_\_  
[REDACTED]

\_\_\_\_\_  
[REDACTED]

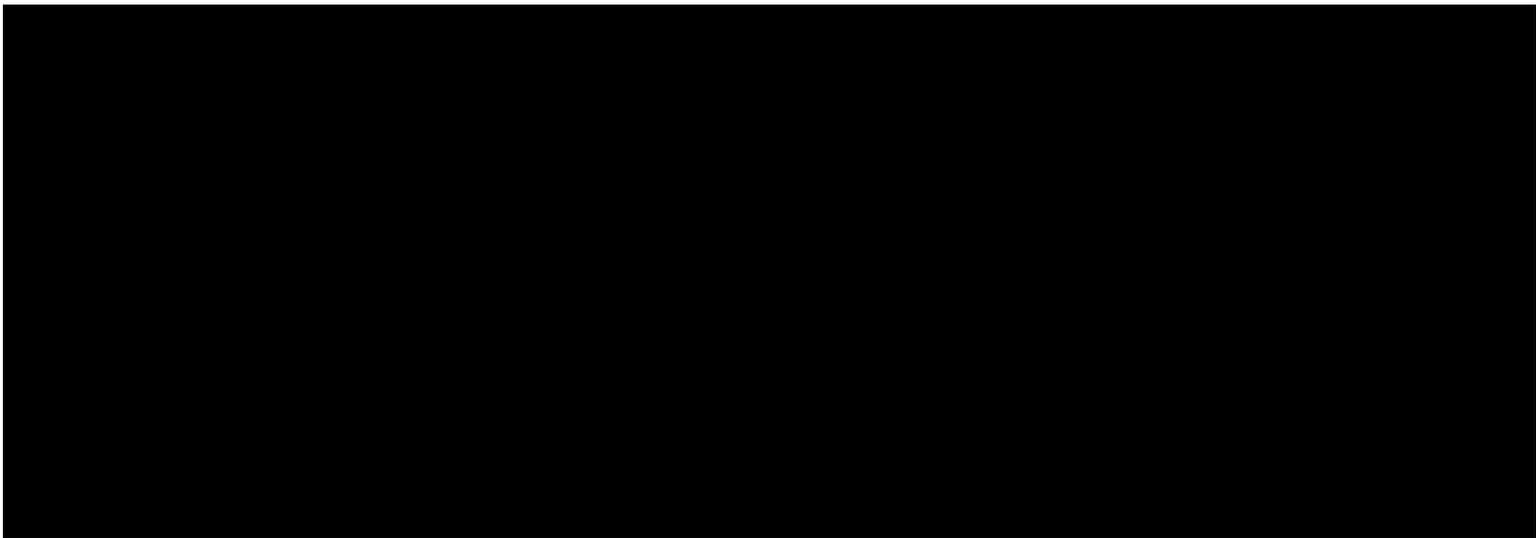
**EXHIBIT H**

**CURRENT ASSET/CURRENT LIABILITY ITEMS**

[See Attached]



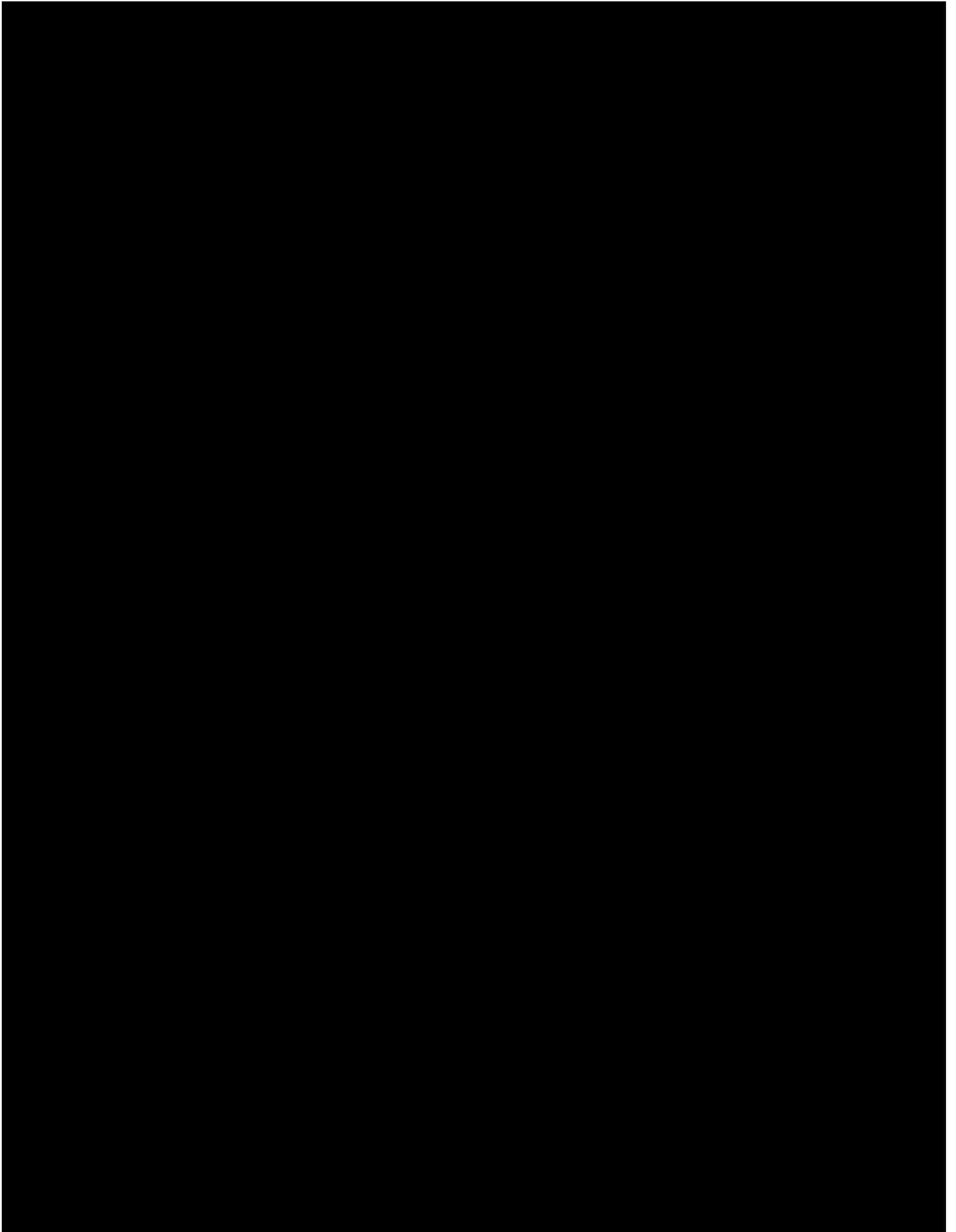


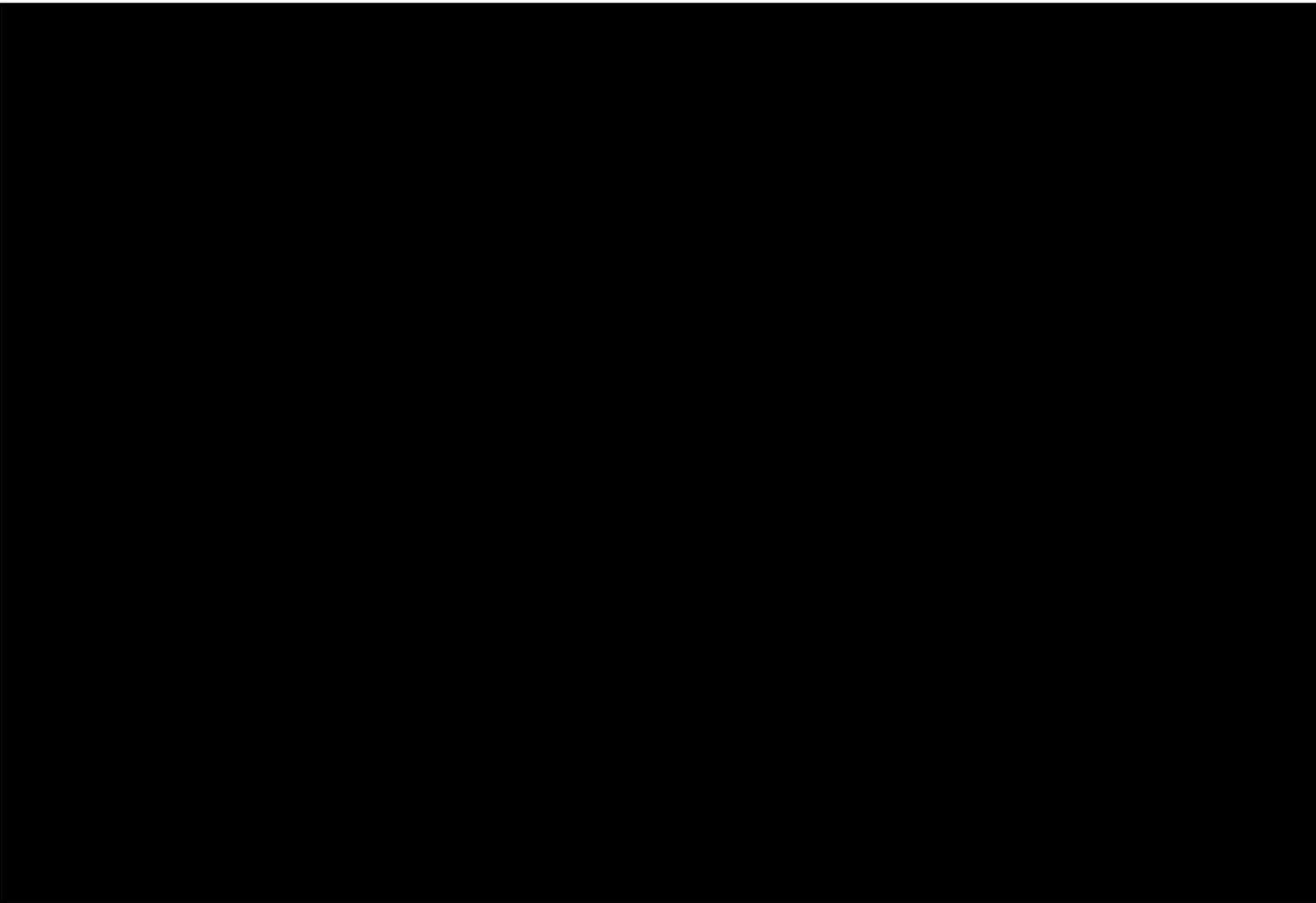


**Schedule 1.01**

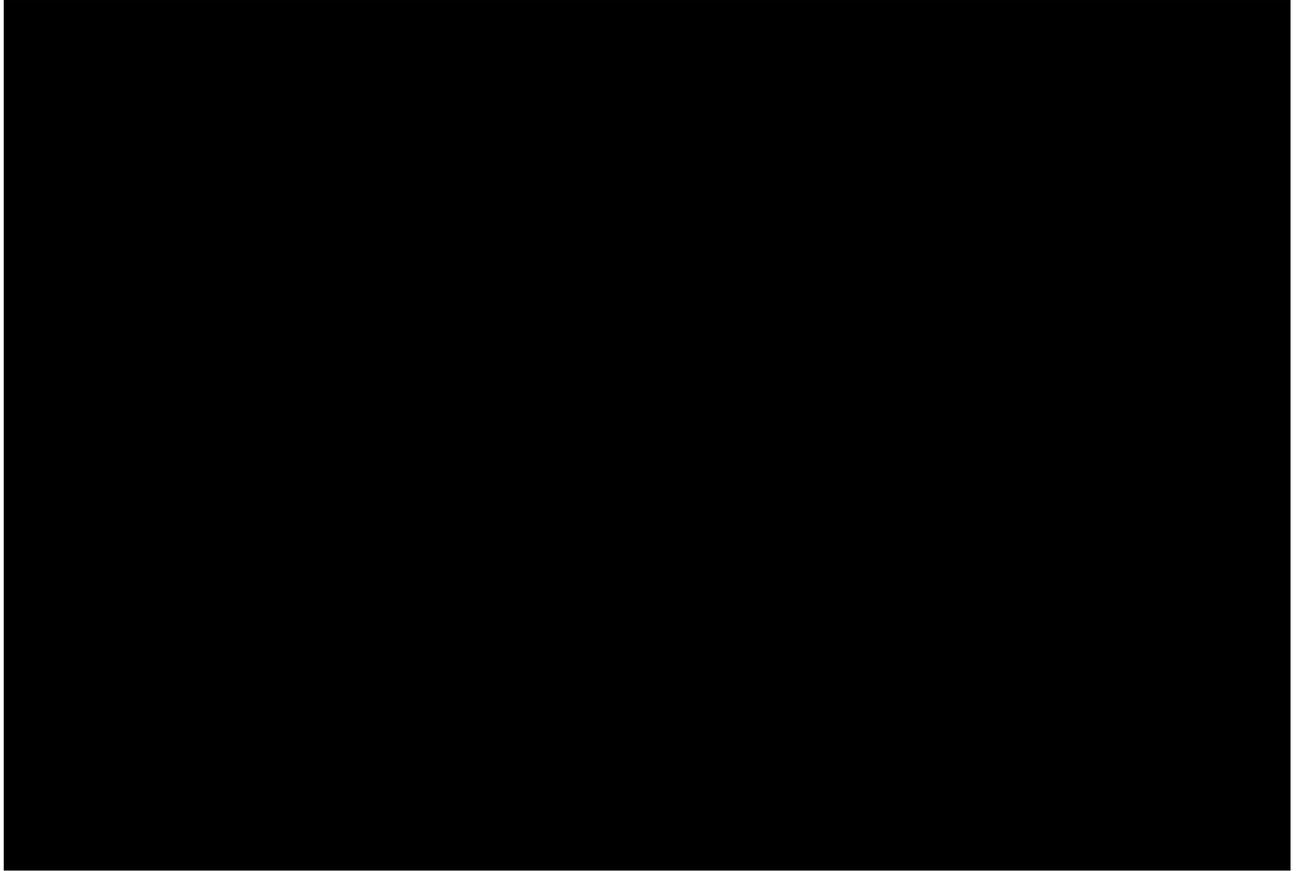


[See Attached]





Schedule 2.01(b)



Schedule 2.04

**Agreed Accounting Principles**

For purposes of this Agreement, Cash and Cash Equivalents, Current Assets, and Current Liabilities will be calculated in accordance with GAAP and the following non-GAAP accounting methods, principles, policies, practices, adjustments, procedures, estimation methods, and classifications (if any) (collectively, the “**Agreed Accounting Principles**”):

1. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Schedule 2.06

**Seller Deliverables**

1. Estoppel certificates in connection with the following properties:

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Lien waivers in connection with the following:

a. [REDACTED]

**Schedule 4.02**

**No Conflicts; Consents - Buyer**

- [REDACTED]
- [REDACTED]
- [REDACTED]

**Schedule 5.12**

**Business Names**

- [REDACTED]
- [REDACTED]
- [REDACTED]

**Schedule 6.02**

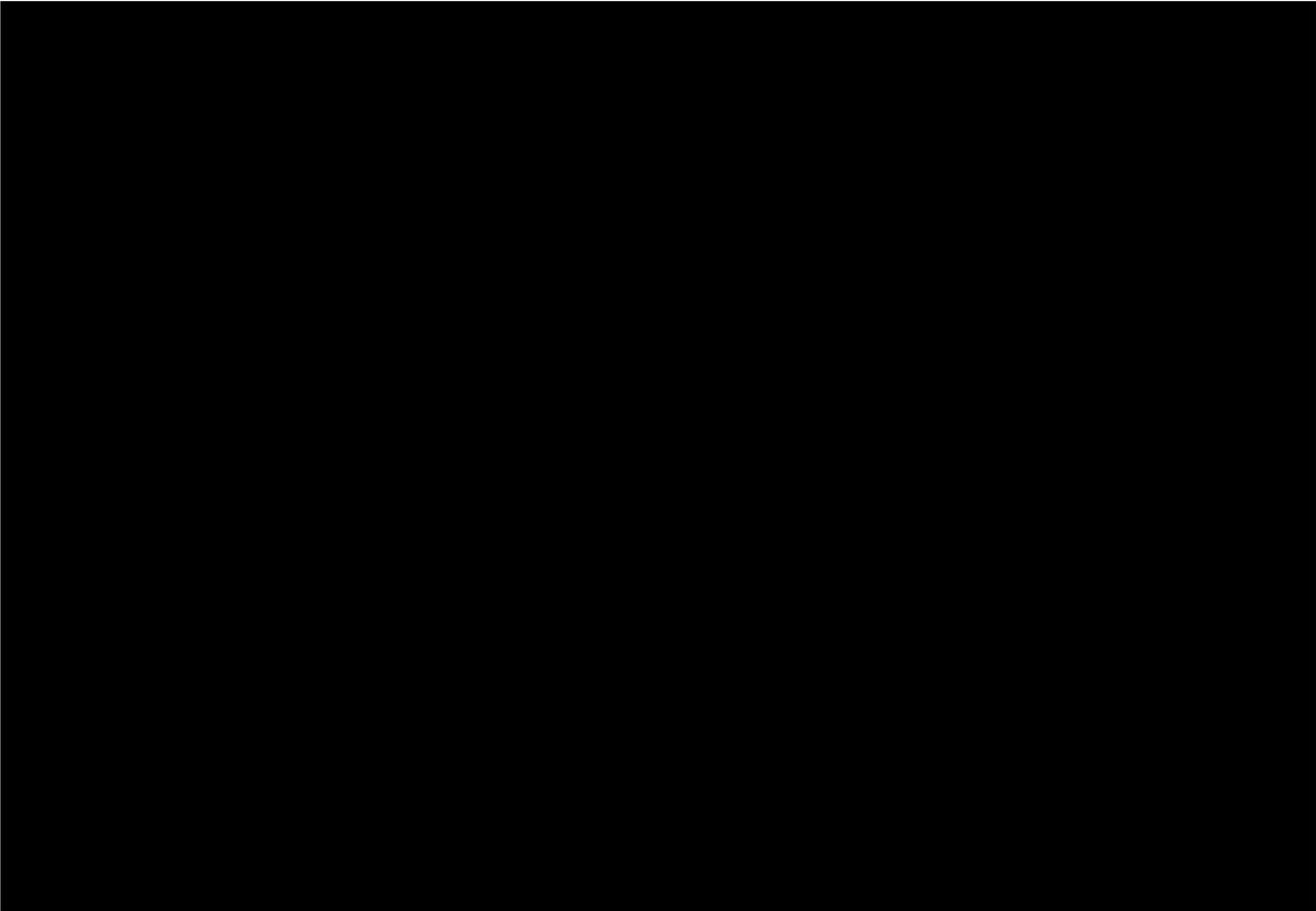
**Allocation Schedule**

The Purchase Price will be allocated and paid by the Buyer as follows between the three different Sellers for their respective share of the Purchased Equity Interests to be purchased under this Agreement:

Seller	Purchased Equity Interests Sold	Percentage of the Purchase Price
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
Total	100% of All Purchased Equity Interests	100.00%

Further, each separate Seller's share of the Purchase Price will be allocated to that Seller's Target Company's underlying assets [REDACTED] in accordance with the following principles for purposes of Section 1060 of the Code and all applicable U.S. Treasury Regulations. Class references will conform to U.S. Treasury Regulation Section 1.338-6(b). The listing of a class of assets in the table below does not necessarily mean that such class of assets is applicable to the Transaction.

Class	Allocation Among the Assets of Each Separate Target Company
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]



**Schedule 7.02**

**Specific Indemnity Matters**

Expressly subject to the provisions of Sections 7.04(c)-(j) of the accompanying Agreement, any Losses based upon, arising out of, with respect to or by reason of:

1. [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FD 36865

OPSEU PENSION PLAN TRUST FUND, JAGUAR TRANSPORT  
HOLDINGS, LLC, AND JAGUAR RAIL HOLDINGS, LLC  
-- CONTROL EXEMPTION --  
COLUMBIA BASIN RAILROAD COMPANY, LLC

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**CERTIFICATION AND VERIFICATIONS**

## VERIFICATION

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



---

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

Dated: July 11, 2025

**CERTIFICATION AND VERIFICATION**

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

I also hereby certify that the subject acquisition of control transaction does not involve a provision or an agreement that may limit future interchange with a third-party connecting carrier.



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

Dated: July 11, 2025