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December 18, 2025
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BEFORE THE
UNITED STATES SURFACE TRANSPORTATION BOARD

WCN Rail, LLC,)
a Pennsylvania Limited Liability Company) Finance Docket # FD 36897
)

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §1150.31

By: Max Callahan, Esq.
Fulcrum Rail
180 North Wacker Drive, Suite 400
Chicago, Illinois 60606
312-629-0222

Attorney for Applicant

WCN RAIL, LLC

Applicant in Finance Docket 36897

Date Filed: December 17, 2025

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SURFACE
TRANSPORTATION BOARD

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**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. §1150.31**

Pursuant to 49 C.F.R. §1150.31, et. seq. and 49 U.S.C. §10502(a), WCN Rail, LLC, a non-carrier, hereby provides verified notice of exemption from 49 U.S.C. §10901 for WCN Rail, LLC's acquisition by Operating Agreement from Colby Nitterhouse, on behalf of Franklin Storage, LP (hereinafter Franklin Storage), and operation pursuant to operating agreement with WCN Rail, LLC of approximately 2,220 feet (.42 mile) of existing railroad right-of-way and trackage and transloading facility owned by WCN Properties, L.P. and leased by Franklin Storage, LP, located at 900 Kriner Road in Chambersburg, Pennsylvania, (hereinafter "Kriner Road Transload Facility"). The Kriner Road Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice.

WCN RAIL, LLC IS A LINE OF RAILROAD THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. §10901, RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION AUTHORITY UNDER §10906

Franklin Storage, LP leases and operates the Kriner Road Transload Facility. The trackage is used in conjunction with interchanging to and from CSX Railway, boxcar,

centerbeam, and flat carloads of bulk commodities (i.e., paper, pulp, drywall, and food products). Products are transloaded to trucks for final delivery.

There is currently 2,220 linear feet of track located on the Kriner Road Transload Facility.

In this circumstance, the Kriner Road Transload Facility is properly considered to be a line of railroad under 49 U.S.C. §10901 pursuant to the Board's tenant-use test, rather than spur, switching, or side-tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. §10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL*, STB Docket No 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transportation Union v. Surface Transportation Board*, 183 F.3d 606 (7th Circuit, 1999).

In that case, as here pertinent, Agracel Limited Liability Company transloaded beer from rail to track at a warehouse that it operated in an industrial park at Effingham, Pennsylvania. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provided of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. §1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel trackage is spur, switching, or side-track excepted from Board operation authority under 49 U.S.C. §10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. §10901, the Board said (1998 STB LEXIS 253, at 8-19 (emphasis in original)):

...(I)n those cases where a tenant's railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus, ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was a by a third-party carrier rather than by the shipper-owner of the track. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Chicago Rail Link LLC – Lease & Oper. – Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union – Pennsylvania Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be WCN Rail, LLC's initial railroad acquisition, and the Kriner Road Transload Facility trackage will constitute the entire line of the WCN Rail, LLC, it follows that the Kriner Road Transload Facility trackage is a line of railroad under 49 U.S.C. §10901, rather than a spur, switching, or side track excepted from Board acquisition and operation authority by virtue of 49 U.S.C. §10906.

INFORMATION REQUIRED BY 49 C.F.R. §1150.33

(a) The full name and address of the applicant;

The full name and address of the applicant in Finance Docket Number 36897 is WCN Rail, LLC, 900 Kriner Road, Chambersburg, Pennsylvania.

(b) The name, address, and telephone number of the representative of the application who should receive correspondence;

WCN Rail, LLC's representative is Max Callahan, Esq., Fulcrum Rail, LLC., 180 North Wacker Drive, Suite 400, Chicago, Illinois, 60606. 312-629-0222.

(c) A statement that an agreement has been reached or details when an agreement will be reached;

An Operating Agreement between Colby Nitterhouse on behalf of Franklin Storage, LP and WCN Rail, LLC, concerning the Kriner Road Transload Facility trackage has been executed on October 23, 2025. A copy of the Operating Agreement is provided herewith.

(d) The operator of the property;

WCN Rail, LLC will be the operator of the property.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property;

The above entity in Finance Docket 36897 is Franklin Storage, LP, a non-railroad Limited Partnership, 900 Kriner Road, Chambersburg, Pennsylvania, 17202.

(2) The proposed time schedule for consummation of the transaction,

WCN Rail, LLC has entered into an Operating Agreement with Colby Nitterhouse on behalf of Franklin Storage, LP. Operations are to be consummated on or about October 23, 2025.

(3) The mile-posts of the subject property, including any branch lines, and

The Kriner Road Transload Facility is not described by milepost numbers. The trackage on the subject property is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) The total route miles being acquired;

A total of approximately 2,220 linear feet (0.42 mile) of trackage is to be operated by WCN Rail, LLC

(f) A map that clearly indicates the area to be serviced, including origins, termini, stations, cities, counties, and states;

The required map is attached to this Notice as Appendix 1-B.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. §1150.34 for Finance Docket Number 36897 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. §1105.6(c)(2)(i) and 49 C.F.R. §1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. §10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket Number 36897. See 49 C.F.R. §1150.32(b).

Respectfully submitted,

WCN Rail, LLC,
a Pennsylvania Limited Liability Company

By: Max Callahan, Esq.
Fulcrum Rail, L.L.C.
180 North Wacker Drive, Suite 400
Chicago, Illinois 60606
312-629-0222

Attorney for Applicant

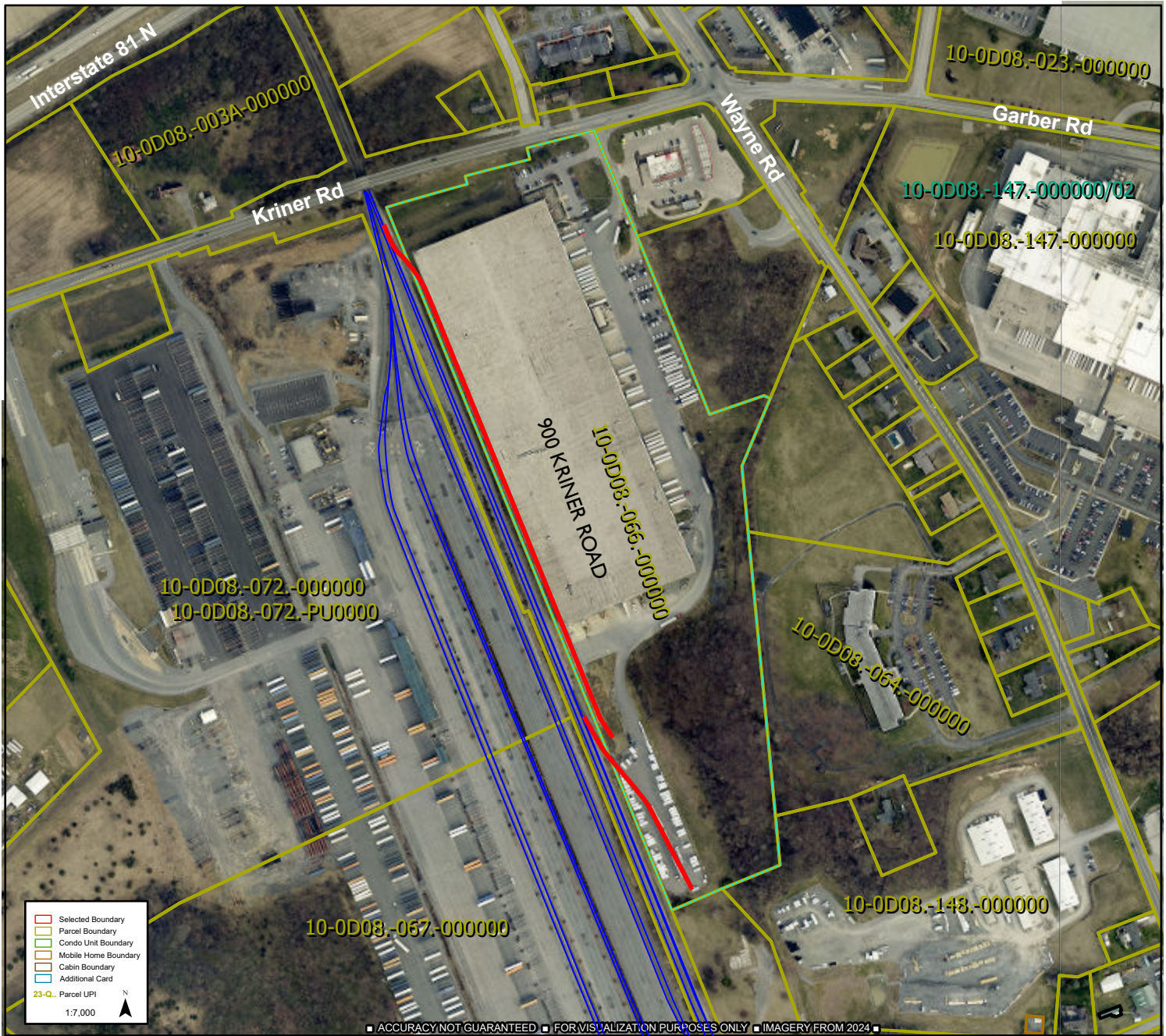
Applicant in Finance Docket Number: FD36897

Finance Docket Number: FD 36897

Appendix 1-A

LENGTH OF WCN RAIL, LLC
KRINER ROAD TRANSLOAD FACILITY

Total Track: 2,220 linear feet = .42 mile



PROPERTY INFORMATION

UPI: 10-0D08.-066.-000000
ADDRESS: 900 KRINER ROAD
CHAMBERSBURG PA 17202

Unit ID: PARCEL A
TYPE: Tax Parcel
DEED AREA: 30.89 ACRES

CURRENT OWNER INFORMATION

OWNER: WCN PROPERTIES L P
ADDRESS: 900 KRINER ROAD
CHAMBERSBURG PA 17202
DEED REF: 15-015234 SOLD: 8/7/2015
PRICE: \$0.00

ASSESSMENT VALUES

BLDGS	\$2,062,230.00
LAND	\$108,120.00
TOTAL	\$2,170,350.00

TAXABLE STATUS

EXEMPT: NO

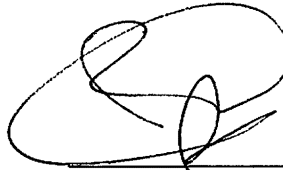
CSXT RR SPUR
CSXT RR SIDING



Finance Docket Number: FD 36897

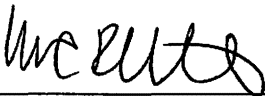
CERTIFICATION UNDER 49 C.F.R. §1150.33(g)

WCN Rail, LLC hereby certifies under 49 C.F.R. §1150.33(g) that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier and will not exceed Forty-Seven Million Two Hundred and Ninety-Nine Thousand Eight Hundred and Fifty-One Dollars (\$47,299,851).

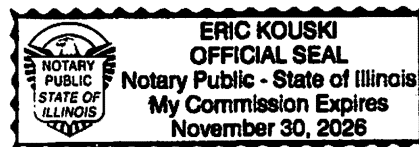


Max Callahan
Authorized Representative of
WCN Rail, LLC

SUBSCRIBED and SWORN to before me
this 17th day of December, 2025.



Notary Public



Finance Docket Number: FD 36897

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NUMBER: FD 36897

WCN RAIL, LLC

- ACQUISITION EXEMPTION -

RAIL LINE OF FRANKLIN STORAGE, LP

AT KRINER ROAD TRANSLOAD FACILITY,

CHAMBERSBURG, PENNSYLVANIA

WCN Rail, LLC has filed a Notice of Exemption to acquire and operate from Franklin Storage, LP, a non-carrier, approximately 2,220 linear feet / .42 mile of right-of-way and trackage and Franklin Storage, LP's Kriner Road Transload Facility in Chambersburg, Pennsylvania. Comments must be filed with the Board and be served on WCN Rail, LLC's representative, Max Callahan, Fulcrum Rail, LLC, 180 North Wacker Drive, Suite 400, Chicago, Illinois, 60606, 312-629-0222.

This Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*.

OPERATING AGREEMENT
OF
WCN RAIL LLC
A Pennsylvania Limited Liability Company

THIS OPERATING AGREEMENT (this “**Agreement**”) of WCN RAIL LLC (the “**Company**”) is dated to be effective as of October 23, 2025 (the “**Effective Date**”), and is entered into by and between COLBY NITTERHOUSE, the sole initial member of the Company (“**Member**”), and the Company. Capitalized terms not defined herein shall have the meaning ascribed to them in Article IX .

ARTICLE I - ORGANIZATION

1.1 **Formation.** The Company has been organized as a Pennsylvania limited liability company by the filing of a Certificate of Organization on October 23, 2025 (“**Certificate**”) with the Pennsylvania Department of State under and pursuant to the Act.

1.2 **Name.** The name of the Company is “WCN Rail LLC” and all Company business shall be conducted in that name or such other names that comply with applicable law as the Member may select from time to time.

1.3 **Registered Principal Office; Other Offices.** The registered principal office of the Company required by the Act to be maintained in the Commonwealth of Pennsylvania shall be 900 Kriner Road, Suite 1, Chambersburg, Pennsylvania or such other office (which need not be a place of business of the Company) as the Member may designate from time to time. The Company may have such other offices as the Member may designate from time to time.

1.4 **Term.** The Company commenced on the date the Certificate was filed with the Pennsylvania Department of State pursuant to Section 8821 of the Act, and shall continue in existence until terminated pursuant to the terms of this Agreement.

1.5 **Tax Status; No State-Law Partnership.** As long as the Company has only one Member, it is the intention of the Company and the Member that the Company be treated as a disregarded entity for federal and all relevant state tax purposes and neither the Company nor the Member shall take any action or make any election which is inconsistent with such tax treatment. All provisions of this Agreement are to be construed so as to preserve the Company's tax status as a disregarded entity. At any time when the Company shall have more than one Member the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and no Member shall be a partner or joint venturer of any other Member, for any

purposes other than federal and state tax purposes, and this Agreement shall not be construed to produce a contrary result.

1.6 Purposes and Activities. The Company is organized to own and operate railroad facilities and to engage in and carry out such other lawful business or activity authorized by the Member. The Company is authorized and empowered to do any and all acts and things necessary, appropriate, advisable or convenient for the furtherance and accomplishment of the purposes and business of the Company described above.

ARTICLE II - MEMBERSHIP, DISPOSITIONS OF INTERESTS

2.1 Initial Member. The sole initial Member of the Company is Colby Nitterhouse.

2.2 Additional Members. Additional Persons may be admitted to the Company as Members and Membership Interests may be created and issued to those Persons and to existing Members at the direction of and on such terms and conditions as may be determined by the Member. The terms of admission or issuance must specify the Sharing Ratios applicable thereto and may provide for the creation of different classes or groups of Members having different rights, powers, and duties. The creation of any new class or group shall be reflected in an amendment to this Agreement indicating the different rights, powers, and duties. Any such admission is effective only after the new Member has executed and delivered to the other Members a document including the new Member's notice address and its agreement to be bound by this Agreement.

2.3 Liability to Third Parties. No Member shall be liable for the debts, obligations or liabilities of the Company, including liability arising under a judgment, decree or order of a court.

2.4 No Certification. No Membership Interest in the Company shall be represented by a separate certificate.

ARTICLE III - CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. Contemporaneously with the execution of this Agreement, Colby Nitterhouse has made an initial Capital Contribution as reflected on the books of the Company.

3.2 Additional Capital Contributions. Additional Capital Contributions shall be required only upon the written approval of all Members. Each Member shall contribute in cash to the Company the Member's Sharing Ratio of all required additional Capital Contributions. Unless a later date is specified in any notice of a required additional Capital Contribution, additional Capital Contributions shall be made within thirty (30) days after written notice of the required amount is given.

3.3 Interest. A Member is not entitled to be paid interest in respect of either its, his, or her capital account or its, his, or her Capital Contributions.

3.4 Capital Account. A capital account shall be established and maintained for each Member in accordance with Code Section § 704 and Treas. Reg. § 1.704-1. On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv)(I).

ARTICLE IV - ALLOCATIONS AND DISTRIBUTIONS

4.1 Allocations.

(a) For as long as the Company has one Member, all items of income, gain, loss, deduction, and credit of the Company shall be allocated to that Member.

(b) At such time as the Company shall have more than one Member:

(i) The Members shall in writing specify the Sharing Ratios of all Members.

(ii) Except as may be otherwise required by Code Section 704(c) and Treas. Reg. § 1.704-1(b)(2)(iv)(f)(4), all items of income, gain, loss, deduction, and credit of the Company shall be allocated among the Members in accordance with their Sharing Ratios.

(iii) All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under Section 706 of the Code and the regulations thereunder.

4.2 Distributions.

(a) The Company shall use its best efforts to distribute sufficient cash to the Member(s) to enable them to pay federal, state, and local income taxes attributable to their respective Sharing Ratios to the extent the Company has cash available to do so and is not prohibited from doing so pursuant to the terms of any loan or other agreement. Such distributions shall be made in preference to any other distributions.

(b) From time to time (but at least once each calendar quarter) the Members shall determine to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, and a reasonable contingency reserve. Subject to any restrictions in any lending arrangement, if such an excess exists, the Members may cause the Company to distribute it to the Member. Distributions shall be made first in payment of any outstanding advances from Members to the Company. Thereafter, distributions shall be made to the Members in proportion to their Sharing Ratios. No Member shall have a contractual right to any distribution other than distributions pursuant to Article VIII.

(c) From time to time, the Member also may cause property of the Company other than cash to be distributed to the Members, which distribution must be made in accordance with their Sharing Ratios and may be made subject to existing liabilities and obligations.

ARTICLE V - MANAGEMENT

5.1 Management by Members. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, the Member. All decisions of the Member(s) shall be made by Member(s) holding a Required Interest.

5.2 Officers. The Member may from time to time appoint and remove Officers of the Company. Such Officers shall have the authority and responsibility of officers under the PaBCL, or such other authority and responsibilities as the Member may from time to time determine. The Officers shall report to and serve at the direction of the Member. The initial President of the Company shall be Colby Nitterhouse.

5.3 Meetings. At such time as the Company shall have more than one Member, meetings shall be conducted in the following manner:

(a) Unless otherwise required by law or provided in this Agreement, Members holding a majority of the total number of votes of all Members shall constitute a quorum for the transaction or business of the Members, and the act of Members holding a majority of the total votes present at a meeting at which a quorum is present shall be the act of the Members. A Member who is present at a meeting of the Members at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the Person acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting.

(b) Meetings of the Members may be held at such place or places as shall be determined from time to time by resolution of the Members. Attendance of a Member at

a meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) Regular meetings of the Members shall be held at such times and places as shall be designated from time to time by resolution of the Members. Notice of such regular meetings shall not be required.

(d) Special meetings of the Members may be called by any Member on at least 24 hours' notice to each other Member. Such notice shall state the purpose or purposes of, and the business to be transacted at, such meeting.

5.4 Action by Written Consent or Telephone Conference. Any action permitted or required by the Act or this Agreement to be taken at a meeting of the Members or any committee designated by the Members may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a majority of the Members or members of such committee, as the case may be, with written notice thereof to all Members. Such consent shall have the same force and effect as a vote of a majority of the Member votes at a meeting. Subject to the requirements of the Act and this Agreement for notice of meetings, Members, or members of any committee, may participate in and hold a meeting of the Members or any committee, as the case may be, by means of a conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in Person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

5.5 Conflicts of Interest. Each Member of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, including ones in competition with the Company, with no obligation to offer to the Company or any other Member the right to participate therein. The Company may transact business with any Member or affiliate thereof, provided the terms of those transactions are approved by a majority of the Members who have no financial interest in the transaction adverse to the Company or are no less favorable than those the Company could obtain from unrelated third parties.

ARTICLE VI - BOOKS, RECORDS, REPORTS, BANK ACCOUNTS AND TAX RETURNS

6.1 Maintenance of Books. The Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Member(s). The books of account for the Company shall be maintained on a cash basis in accordance with such method of accounting as may be adopted by the Company from time to time, except that the capital accounts of the

Members shall be maintained as provided herein. December 31 shall be the accounting and fiscal year end of the Company.

6.2 Reports. On or before the 15th day of the third month following the end of each fiscal year during the term of the Company, the Members shall cause each Member to be furnished with a balance sheet, an income statement, and a statement of changes in Members' capital of the Company for, or as of the end of, that year compiled by a recognized firm of certified public accountants. The Members also may cause to be prepared or delivered such other reports as they may deem appropriate. The Company shall bear the costs of all of these reports.

6.3 Accounts. The Member shall establish and maintain one or more separate bank and investment accounts and arrangements for Company funds in the Company name with financial institutions and firms that the Members determine. The Member may not commingle the Company's funds with the funds of any Member; however, Company funds may be invested in a manner the same as or similar to the Members' investment of their own funds or investments by their affiliates.

6.4 Tax Returns. The Member shall cause to be prepared and filed on a timely basis all necessary federal and state income tax returns for the Company. Each Member shall furnish to the Members all pertinent information in its possession relating to Company operations that is necessary to enable Company's income tax returns to be prepared and filed.

6.5 Partnership Representative. If and only if the Company shall have more than one member, the following provisions shall be applicable:

(a) Appointment; Resignation. The Members hereby appoint Colby Nitterhouse as the "partnership representative" as provided in Code Section 6223(a) (the "**Partnership Representative**"). The Partnership Representative can be removed at any time by the vote of a Required Interest of the other Members. The Partnership Representative shall resign if it is no longer a Member. In the event of the resignation or removal of Partnership Representative, a Required Interest of the other Members shall select a replacement Partnership Representative. If the resignation or removal of the Partnership Representative occurs prior to the effectiveness of the resignation or removal under applicable Department of Treasury regulations or other administrative guidance, the Partnership Representative that has resigned or been removed shall not take any actions in its capacity as Partnership Representative except as directed by the other Members.

(b) Tax Examinations and Audits. The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by governmental authorities, including resulting administrative and judicial proceedings, and to expend Company

funds for professional services and costs associated therewith. The Partnership Representative shall promptly notify the Members of the commencement of any tax audit of the Company, upon receipt of a tax assessment and upon the receipt of a notice of final partnership administrative adjustment or final partnership adjustment, and shall keep the other Members reasonably informed of the status of any tax audit or resulting administrative or judicial proceeding. Without the consent of Required Interest, the Partnership Representative shall not extend the statute of limitations, file a request for administrative adjustment, file suit relating to any Company tax refund or deficiency or enter into any settlement agreement relating to items of income, gain, loss or deduction of the Company with any governmental authority.

(c) BBA Elections. To the extent permitted by applicable law and regulations, the Partnership Representative on behalf of the Company shall annually elect out of the Bipartisan Budget Act of 2015 (the “BBA”) Procedures (the “BBA Procedures”) pursuant to Code Section 6221(b). For any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within forty-five (45) days of any notice of final partnership adjustment, the Company shall elect the alternative procedure under Code Section 6226, and furnish to the Internal Revenue Service and each Member (including former Members) during the year or years to which the notice of final partnership adjustment relates a statement of the Member’s share of any adjustment set forth in the notice of final partnership adjustment.

(d) Tax Returns and Tax Deficiencies. Each Member agrees that such Member shall not treat any Company item inconsistently on such Member’s federal, state, foreign, or other income tax return with the treatment of the item on the Company’s return. Any deficiency for taxes imposed on any Member or former Member (including penalties, additions to tax or interest imposed with respect to such taxes, and any taxes imposed pursuant to Code Section 6226, as amended by the BBA) shall be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

(e) Income Tax Elections. Except as otherwise provided herein, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided that the Partnership Representative shall make an election under Code Section 754, if requested in writing by another Member.

(f) Survival. The obligations of each Member or former Member under this Section 6.5 shall survive the transfer or redemption by such Member of its membership interest, the termination of this Agreement, or the dissolution of the Company.

ARTICLE VII - DEATH

7.1 **Death.** Upon the death of any Member, the personal representative of the deceased Member, or any legatee to whom the Membership Interest may have been bequeathed, shall become a successor Member and shall succeed to all rights and interests of the deceased Member.

ARTICLE VIII - DISSOLUTION, LIQUIDATION AND TERMINATION

8.1 **Dissolution.** The Company shall dissolve and its affairs shall be wound up on the first to occur of the following:

(a) dissolution is approved upon the vote or the written consent of the Member or Members holding a Required Interest or is otherwise approved by the Member under any provision of this Agreement expressly authorizing approval of dissolution of the Company;

(b) entry of a decree of judicial dissolution of the Company under Section 8871 of the Act.

8.2 **Liquidation and Termination.** On dissolution of the Company, the Member shall act as liquidator or may appoint one or more Officers as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Member.

8.3 **Distributions.** On dissolution, Company property shall be distributed to the Member. At such time as the Company shall have more than one Member, Company property shall be distributed among the Members in the following order of priority:

(a) If the ratio of a Member's positive capital account balance to all positive capital account balances exceeds the Member's Sharing Ratio, to such Member until all positive capital account balances are proportionate to the Members' Sharing Ratios; and

(b) Thereafter to Members having positive capital account balances in proportion to such balances.

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section. The distribution of cash or property to a Member in accordance with the provisions of this Section constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its

Membership Interest in all the Company's property. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

8.4 Certificate of Dissolution. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Member (or such other Person or Persons as the Act may require or permit) shall file a Certificate of Dissolution with the Pennsylvania Department of State, cancel any other filings made pursuant to Article I , and take such other actions as may be necessary to terminate the Company.

ARTICLE IX - DEFINITIONS

9.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"Act" means the Pennsylvania Uniform Limited Liability Company Act of 2016, 15 Pa.C.S. §§8811 et. seq., and any successor statute, as amended from time to time.

"Capital Contribution" means any contribution by a Member to the capital of the Company.

"Certificate" has the meaning given that term in Section 1.1.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Member" means Colby Nitterhouse or any Person hereafter admitted as a member and who holds a Membership Interest at the time of reference.

"Membership Interest" means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

"Officer" means Persons appointed as such by the Members, if holding office at the time of reference.

"PaBCL" means the Pennsylvania Business Corporation Law of 1988, 15 Pa.C.S. §§1101 et. seq., and any successor statute, as amended from time to time.

"Person" means any individual, joint venture, association, partnership, limited liability company, corporation, foundation, trust, estate or other entity.

"Required Interest" means one or more Members having among them more than 50% of the Sharing Ratios of all Members or such greater percentage as may be expressly stated herein with respect to a specific decision. Each Member shall have one vote for each one percent

(1%) of Sharing Ratio and shall have a fraction of a vote for each fraction of one percent (1%) of Sharing Ratio. For example, a Member having a Sharing Ratio of 24.25% would have 24 $\frac{1}{4}$ votes.

“**Sharing Ratio**” initially means the interest of Colby Nitterhouse in the profits of the Company. Upon admission of any other Member, the term means, with respect to any Member, the interest of each Member in the profits of the Company as established by written agreement of all Members.

Other terms defined herein have the meanings so given them.

9.2 **Construction.** Whenever the context requires, the gender of all words in this Agreement includes the masculine, feminine, and neuter. Any references to Members, plural, shall apply to the sole initial Member in the singular until such time as the Company shall have more than one Member. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to Exhibits attached hereto, each of which is made a part hereof for all purposes.

ARTICLE X - GENERAL PROVISIONS

10.1 **Offset.** Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

10.2 **Notices.** Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in Person, by courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the Person to receive it. Any notice, request, or consent to the Company must be given at the principal office of the Company. Whenever any notice is required to be given by law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

10.3 **Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

10.4 Amendment or Modification. This Agreement may be amended or modified from time to time only by a written instrument adopted by the Member and/or executed and agreed to by Members holding a Required Interest; provided, however, that (a) an amendment or modification reducing a Member's Sharing Ratio (other than to reflect changes otherwise provided by this Agreement) is effective only with that Member's consent, and (b) an amendment or modification reducing the required Sharing Ratio or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Sharing Ratio or other measure theretofore required.

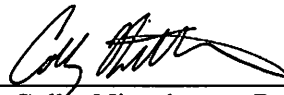
10.5 Binding Act. This Agreement is binding on and inures to the benefit of the Member and its respective legal representatives, successors, and assigns.

10.6 Governing Laws; Severability. This Agreement is governed by and shall be construed in accordance with the law of the Commonwealth of Pennsylvania. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

10.7 No Third Party Benefit. The provisions hereof are solely for the benefit of the Company and its Member and are not intended to, and shall not be construed to, confer a right or benefit on any creditor of the Company or any other Person.

IN WITNESS WHEREOF, the initial Member of the Company and the Company have executed this Agreement as of the date first set forth above.

WCN RAIL LLC

By: 
Colby Nitterhouse, President


Colby Nitterhouse

[Signature Page to Operating Agreement]