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May 9, 2008

Via Hand Delivery

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street, SW
Washington, DC 20423

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**RE: Finance Docket No. 35139
Genesee & Wyoming Inc. – Control Exemption – Columbus &
Greenville Railway Company, Chattooga & Chickamauga Railway
Company, and Luxapalila Valley Railroad, Inc.**

Dear Secretary Quinlan:

On behalf of Genesee & Wyoming Inc. ("GWI"), please find enclosed for filing in the public docket a redacted Public Version of the Stock Purchase and Merger Agreement by and among GWI, CAGY Acquisition Co., CAGY Industries, Inc., and stockholders of CAGY Industries, Inc. ("Merger Agreement"). An original and 10 copies of the Merger Agreement are enclosed.

Please contact me if you have any questions about this filing. Thank you.

Respectfully submitted,

Kevin M. Sheys
Counsel for Genesee & Wyoming Inc.

Enclosure



STOCK PURCHASE AND MERGER AGREEMENT

dated as of April 28, 2008

by and among

GENESEE & WYOMING INC ,

CAGY ACQUISITION CO ,

CAGY INDUSTRIES, INC .

and

THOSE STOCKHOLDERS OF CAGY INDUSTRIES, INC PARTY HERETO

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EXHIBIT A **Form of Escrow Agreement**

EXHIBIT B **Form of Restated Certificate of Incorporation**

EXHIBIT C **List of Company Stockholders and shares of Company Stock held by each such Company Stockholder**

EXHIBIT D **Form of FIRPTA Certificate**

STOCK PURCHASE AND MERGER AGREEMENT

This STOCK PURCHASE AND MERGER AGREEMENT, dated as of April 28, 2008 (this "Agreement"), is among (i) Genesee and Wyoming Inc., a Delaware corporation (the "Parent"), (ii) CAGY Acquisition Co., a Delaware corporation and a wholly owned subsidiary of the Parent (the "Acquirer"), (iii) CAGY Industries, Inc., a Delaware corporation (the "Company"), and (iv) those stockholders of the Company party hereto (the "Selling Stockholders")

RECITALS

WHEREAS, the Company has authorized capital stock consisting of (i) 25,000 shares of common stock, par value \$0.50 per share ("Company Stock"),

WHEREAS, the Selling Stockholders own beneficially and of record in excess of XXX of the outstanding shares of Company Stock on the date hereof and on the Closing Date (such shares of Company Stock, the "Seller Stock"),

WHEREAS, the Acquirer has an authorized share capital of 500 shares of common stock, par value \$0.01 per share, all of which shares are issued and outstanding and held by the Parent,

WHEREAS, the Company and the Company Subsidiaries are engaged in the business of operating short line railroads (the "Business"),

WHEREAS, the boards of directors, as applicable, of each of the Parent, the Acquirer, and the Company believe that the merger of the Acquirer with and into the Company would be advantageous and beneficial to their respective corporations and stockholders, and

WHEREAS, the board of directors of the Company (the "Board") has, at a meeting duly called and held prior to the execution of this Agreement (or through action by effective written consent pursuant to the applicable provisions of the Delaware General Corporation Law, as amended (the "DGCL")), unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Stock Sale and the Merger, are advisable, fair to and in the best interests of the holders of Company Stock, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Stock Sale and the Merger, and (iii) approved this Agreement and the transactions contemplated hereby, including the Stock Sale and the Merger, for purposes of Section 203 of the DGCL, to the extent applicable,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree that, promptly following the acquisition by the Acquirer of the Seller Stock, the Acquirer shall be merged with and into the Company, and the Company shall continue as the surviving corporation (the "Surviving Corporation"), in accordance with the laws of the State of Delaware, in each case upon the terms and subject to the conditions set forth in this Agreement (the "Merger").

ARTICLE I

THE STOCK PURCHASE AND MERGER

Section 1.1 Closing Subject to and upon the terms and conditions set forth in this Agreement, the closing of the Transactions (the "**Closing**") will be held at the offices of xx, no later than the **third business day after all the conditions set forth in Articles VI and VII have been satisfied or waived** (other than those conditions that by their terms cannot be satisfied until the Closing, but subject to the satisfaction or waiver or such conditions), or such other date as may be mutually agreed upon among the parties hereto (the "**Closing Date**")

Section 1.2 Sale and Purchase of the Seller Stock Subject to the terms and conditions of this Agreement, at the Closing, each Selling Stockholder shall sell, transfer, convey and deliver, and the Acquirer shall purchase, all of each such Selling Stockholder's right, title and interest in and to the Seller Stock, free and clear of all liens (such transactions, the "Stock Sale")

Section 1.3 Closing Deliverables At the Closing

(a) Each Selling Stockholder shall deliver, or cause to be delivered, to the Acquirer certificates representing the Seller Stock, free and clear of all liens, duly endorsed in blank or accompanied by stock powers duly endorsed in favor of the Acquirer, and accompanied by all requisite stock transfer stamps

(b) Each of Parent and the Designated Representative (on behalf of the Company Stockholders) shall execute and deliver, and cause the Escrow Agent to execute and deliver, the Escrow Agreement in the form attached as Exhibit A

(c) The Acquirer shall deliver, or cause to be delivered, to each Selling Stockholder by wire transfer of immediately available funds to an account of the Selling Stockholder, which shall be designated in writing to Acquirer at least two business days prior to the Closing, an amount in cash, without interest and less applicable withholding, equal to the number of shares of Seller Stock transferred by such Selling Stockholder multiplied by the Closing Per Share Amount

(d) The Acquirer shall deliver, or cause to be delivered, to the Escrow Agent the Escrow Amount payable by wire transfer in immediately available funds to the Escrow Agent for deposit into the Escrow Account pursuant to the terms of the Escrow Agreement

(c) The Company shall deliver to the Acquirer a duly executed and acknowledged certificate, in form and substance acceptable to the Acquirer and in compliance with the Code and Treasury Regulations promulgated thereunder, certifying such facts as to establish that the sale of the Selling Stock, the Merger and any other transactions contemplated hereby are exempt from withholding pursuant to section 1445 of the Code

(f) Each of the Company, the Selling Stockholders and the Acquirer shall deliver all other instruments, agreements, certificates and documents required to be delivered or reasonably requested by such party on or prior to the Closing Date pursuant to this Agreement

Section 1.4 Effective Date of Merger. Subject to the satisfaction or waiver of those conditions set forth in Articles VI and VII hereof and the completion in all respects of the Stock Sale, on the Closing Date, the Company and the Acquirer shall cause to be duly prepared and definitively executed and delivered to each other a Certificate of Merger, and cause such document to be filed with the Secretary of State of the State of Delaware in order to cause the Merger to become effective under, and in accordance with, the laws of the State of Delaware and this Agreement. The Merger shall become effective on the date and at the time of filing of the Certificate of Merger with the Secretary of State for the State of Delaware, or at such other time as shall be agreed upon by the Company and the Acquirer and as shall be set forth in the Certificate of Merger (the "Effective Time") The date on which the Effective Time occurs shall be referred to herein as the "Effective Date." For all purposes, all of the document deliveries and other actions to occur at the Closing will be conclusively presumed to have occurred at the same time, immediately before the Effective Time

Section 1.5 Terms and Conditions of Merger At the Effective Time, pursuant to this Agreement and the Certificate of Merger, automatically and without further action

(a) The Acquirer shall be merged with and into the Company and the separate existence of the Acquirer shall cease

(b) The Company shall continue as the Surviving Corporation in the Merger

(c) The effect of the Merger will be as provided in the applicable provisions of the DGCL

(d) All of the estate, properties, rights, privileges, powers and franchises of the Company and the Acquirer and all of their property, real, personal and mixed, and all debts due on whatever account to either of the Company or the Acquirer shall vest in the Surviving Corporation, without further act or deed, except as contemplated by this Agreement

(e) The Surviving Corporation shall be responsible for all of the liabilities and obligations of each of the Company and the Acquirer and the liabilities of the Company and the Acquirer shall not be affected nor shall the rights of creditors thereof or of any Persons dealing with the Company or the Acquirer be impaired

(f) The Certificate of Incorporation of the Surviving Corporation shall be amended and restated so as to read as set forth on Exhibit B

(g) The By-Laws of the Surviving Corporation shall be the same as the By-Laws of the Company immediately prior to the Effective Time, until amended in accordance with the terms thereof

(h) From and after the Effective Time, the board of directors of the Surviving Corporation will consist of the individuals set forth on Schedule 1.5(h). Each such director will hold office, subject to the applicable provisions of the Certificate of Incorporation and the By-Laws of the Surviving Corporation, until the next annual meeting of stockholders of the Surviving Corporation and until its successor shall be duly elected or appointed and qualified. If, at or after the Effective Time, a vacancy shall exist in the board of directors of the Surviving Corporation by reason of death or inability to act, or for any other reason, such vacancy may be filled in the manner provided in the By-Laws of the Surviving Corporation.

(i) From and after the Effective Time, the individuals set forth on Schedule 1.5(i) shall be the officers of the Surviving Corporation and shall act as such and hold the offices set forth opposite their names until their respective successors are duly elected or appointed and qualified. If, at or after the Effective Time, a vacancy shall exist in any of the offices of the Surviving Corporation by reason of death or inability to act, or for any other reason, such vacancy may be filled in the manner provided in the By-Laws of the Surviving Corporation.

(j) Each issued and outstanding share of the capital stock of the Acquirer shall be converted into and represent the right to receive one (1) share of common stock, par value \$ 0.1 per share, of the Surviving Corporation, whereupon the Parent shall own all of the issued and outstanding capital stock of the Surviving Corporation.

(k) Each share of Company Stock issued and outstanding immediately prior to the Effective Time (other than (x) shares held by the Parent or the Acquirer, including all shares purchased by the Acquirer pursuant to the Stock Sale, which shall be cancelled, (y) shares to be cancelled in accordance with Section 1.5(l) and (z) Dissenting Shares (as defined below)) shall become, and be converted into, the right to receive an amount in cash equal to, and each Company Stockholder shall be entitled to receive, subject to the execution and delivery of the Required Documentation (as defined below) by such Company Stockholder, the Closing Per Share Amount per share of Company Stock. Notwithstanding the foregoing, each share of Company Stock owned by any direct or indirect Subsidiary of the Company shall remain outstanding as shares in the Surviving Corporation, and no payment shall be made with respect thereto.

(l) Each share of Company Stock held as treasury stock by the Company immediately prior to the Effective Time shall be cancelled and retired, and shall cease to exist, and no payment shall be made with respect thereto.

Section 1.6 Surrender and Exchange of Certificates

(a) Exchange Procedures. Promptly after the Effective Time but in any event within ten (10) business days after the Closing Date, the Surviving Corporation shall cause to be mailed or delivered to each holder of record of a certificate or certificates (the "Certificates") that represented as of the Effective Time outstanding shares of Company Stock to be exchanged pursuant to Section 1.5(k), a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Parent or, if applicable, Paying Agent and shall be in such form and have such other provisions as Parent may reasonably specify, including specific agreement to and

acknowledgement of the provisions of Section 1.11, Section 1.15, Section 5.15 and Article VIII) and instructions for use in effecting the surrender of the Certificates in exchange for payment of the consideration therefor. Upon surrender of a Certificate to Parent or the Paying Agent, as applicable, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions (collectively, the "Required Documentation"), the holder of such Certificate shall be entitled to receive in exchange therefor payment of the applicable Closing Per Share Amount per share which such holder has the right to receive pursuant to Section 1.5(k), after giving effect to any required withholdings and without interest, and the Certificate so surrendered shall forthwith be canceled.

(b) Required Withholding. Each of the Paying Agent, the Parent, the Acquirer and the Surviving Corporation shall be entitled to deduct and withhold from any amounts payable pursuant to this Agreement to any holder or former holder of shares of Company Stock such amounts as the Paying Agent, the Parent, the Acquirer or the Surviving Corporation reasonably determines that are required to be deducted or withheld therefrom under United States federal or state, local or foreign Law. To the extent that such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(c) Lost, Stolen or Destroyed Certificates. In the event any Certificates representing Company Stock shall have been lost, stolen or destroyed, the Paying Agent shall pay in exchange for such lost, stolen or destroyed Certificates, upon the making of an acceptable affidavit of that fact by the holder thereof and the delivery of such other documents reasonably requested by the Paying Agent, the applicable cash amount pursuant to Section 1.5(k), provided, however, that Parent may, in its discretion and as a condition precedent to the payment thereof, require the owner of such lost, stolen or destroyed Certificates (i) to execute an indemnity agreement with respect to such Certificate in the form reasonably specified by Parent, and that is reasonably acceptable to the Company, prior to the Effective Time and (ii) in the case of any such Certificate representing more than XXXXXXX of Company Stock, to post a bond in such reasonable amount and on such customary terms as Parent may direct as indemnity against any claim that may be made against Parent or the Paying Agent with respect to such Certificate.

Section 1.7 Dissenting Shares

(a) Notwithstanding any provision of this Agreement to the contrary, with respect to any shares of Company Stock held by stockholders of the Company who have not elected to receive payment pursuant to Section 1.6 and who are entitled to demand and who have properly exercised and perfected and/or reserved their appraisal or dissenters' rights (the "Dissenting Shares") in accordance with the DGCL, such Dissenting Shares shall not be converted into or represent the right to receive the consideration payable pursuant to this Agreement upon consummation of the Merger, but, instead, the holders of Dissenting Shares shall be entitled to payment of the appraised value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL, unless and to the extent that any such holder of Dissenting Shares shall have irrevocably forfeited its right to appraisal under Section 262 of the DGCL or irrevocably withdrawn its demand for appraisal. If any such holder of Dissenting

Shares has so irrevocably forfeited or withdrawn its right to appraisal of Dissenting Shares, then, as of the occurrence of such event, such holder's Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive the consideration payable in respect of such shares pursuant to this Agreement, without interest, which payments shall be made pursuant to the terms of this Agreement, and the Parent and the Acquirer shall set aside such amounts as needed to make such payments

(b) The Company shall serve prompt notice to the Parent of any demands received by the Company for appraisal or dissenters' rights of any Company Stock, and the Acquirer shall have the right to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of the Parent, make any payment with respect to, or settle or compromise or offer to settle or compromise, any such demand, or agree to do any of the foregoing

Section 1.8 No Further Transfers Following the Closing, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of any shares of Company Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate is presented (for transfer or otherwise) to the Surviving Corporation or the Paying Agent, such Certificate shall be canceled and, subject to Section 1.5(k) and the procedures provided for in Section 1.6 hereof, payment shall be made of the consideration provided for in this Agreement in respect of the number of shares of Company Stock represented by such Certificate

Section 1.9 Termination of Rights All cash paid upon surrender of a Certificate in accordance with the provisions of this Article I, including the rights to additional payments under Sections 1.13 and 1.14, shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Stock formerly represented by such Certificate. After the Effective Time, holders of Company Stock will cease to be, and will have no rights as, stockholders of the Company, and such holders' rights will consist only of (i) in the case of shares other than Dissenting Shares, the right to receive the consideration provided for in this Agreement in respect of such shares, and (ii) in the case of Dissenting Shares, the rights afforded to the holders thereof under the applicable provisions of the DGCL. Until surrendered for cancellation in accordance with the provisions of this Article I, each stock certificate representing shares of Company Stock, or the right to receive shares of Company Stock, shall, from and after the Effective Time, represent (A) in the case of shares other than Dissenting Shares, the right to receive the consideration provided for in this Agreement in respect of such shares, without interest thereon, and (B) in the case of Dissenting Shares, the rights afforded to the holders thereof under the applicable provisions of the DGCL. If any Certificate has not been surrendered prior to five (5) years after the Effective Time (or immediately prior to such earlier date on which the applicable Closing Per Share Amount in respect of such Certificate would otherwise escheat to or become the property of any Governmental Entity), any cash, dividends, distributions or other things of value in respect of such Certificate shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interests of any Person, whether previously entitled thereto or not

Section 1.10 No Liability Notwithstanding anything to the contrary in this Agreement, none of the Paying Agent, the Surviving Corporation or any party hereto shall be liable to a holder of shares of Company Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Law

Section 1.11 Appointment of Designated Representative

(a) In order to efficiently administer the Transactions for the benefit of all of the Company Stockholders, including the resolution of disputes set forth in Section 1.13(c), any notices, instructions or decisions under the Escrow Agreement and the indemnification provisions set forth in Article VIII, the Selling Stockholders hereby (and each other Company Stockholder pursuant to the Required Documentation shall thereby) designate each of XXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXX as attorney-in-fact for and on behalf of all Company Stockholders individually and as any group (acting collectively or individually, the "Designated Representative") In connection with such designation, the Selling Stockholders hereby (and each other Company Stockholder pursuant to the Required Documentation shall thereby) agree for and on behalf of the Company Stockholders that

(i) the Parent, Escrow Agent and Paying Agent shall be able to rely conclusively on the instructions and decisions of the Designated Representative in respect of this Agreement and the Escrow Agreement, as applicable, whether before or after the Closing,

(ii) all actions, decisions and instructions of the Designated Representative shall be conclusive and binding upon all of the Company Stockholders, and no Company Stockholder shall have any cause of action against the Designated Representative for any action taken, decision made or instruction given by the Designated Representative under this Agreement, the Escrow Agreement or any ancillary document (or for any failure to take such action, make such decision or give such instruction), except for fraud or willful misconduct by the Designated Representative, and that such Company Stockholders, jointly and severally, shall indemnify the Designated Representative for any and all claims, liabilities, Losses, damages, costs and expenses which such Designated Representative shall suffer and which relate to or arise, directly or indirectly, out of any action taken by in its capacity as a Designated Representative in accordance with the terms of this Agreement, the Escrow Agreement and which are asserted by any other Company Stockholder against such Designated Representative, except for fraud or willful misconduct by the Designated Representative,

(iii) the provisions of this Section 1.11 are independent and severable, are irrevocable and coupled with an interest, and shall be enforceable notwithstanding any rights or remedies that any Company Stockholder may have in connection with the Transactions,

(iv) remedies available at law for any breach of the provisions of this Section 1.11 are inadequate, therefore, the Parent, the Acquirer and/or the

Surviving Corporation shall be entitled to temporary and permanent injunctive relief without the necessity of proving damages if the Parent, the Acquirer and/or the Surviving Corporation brings an action to enforce the provisions of this Section 1.11, and

(v) the provisions of this Section 1.11 shall be binding upon the executors, heirs, legal representatives, personal representatives, successor trustees, and successors of each Company Stockholder, and any references in this Agreement to a Company Stockholder shall mean and include the successors to such Company Stockholder's rights hereunder, whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise

(b) Each Company Stockholder hereby authorizes the Designated Representative to take any and all action as is contemplated to be taken by or on behalf of such Company Stockholder, the Selling Stockholders or the Company Stockholders, and to assert the rights of such Company Stockholder, the Selling Stockholders or the Company Stockholders granted pursuant to the terms of this Agreement or the Escrow Agreement or in connection herewith or therewith

(c) Any Designated Representative may be replaced, and any vacancy that results for any reason in the office of the Designated Representative may be filled, by those Company Stockholders that immediately prior to the Closing held a majority of the Closing Date Outstanding Shares upon not less than ten (10) business days' prior written notice to Parent. No bond or other form of security shall be required of the Designated Representative, and the Designated Representative shall receive no compensation for services rendered. For all purposes of this Agreement and the Escrow Agreement, notices and communications to or from the Designated Representative shall constitute notice to or from each of the Company Stockholders

Section 1.12 Closing Date Estimated Adjustments Not later than seven (7) business days prior to the Closing Date, the Company shall deliver to Parent and Acquirer a schedule (the "Estimated Closing Date Schedule") setting forth, as of March 31, 2008, the Company's calculation of (a) Closing Date Debt (the "Estimated Closing Date Debt"), (b) Company Transaction Expenses (the "Estimated Company Transaction Expenses"), (c) XXXXXXXXXXXX (the "Estimated XXXXXXXXXXXXXXXX"), (d) XXXXXXXXXXXXXXXX (the "Estimated XXXXXXXXXXXXXXXX") and (e) the Closing Date Net Working Capital (the "Estimated Closing Date Net Working Capital") showing all components (and the amounts thereof) necessary to compute the Estimated Closing Date Net Working Capital. The Estimated Closing Date Schedule will be prepared in good faith and in accordance with GAAP on a basis consistent with that employed in the preparation of the audited components of the Financial Statements. The Estimated Closing Date Schedule shall be subject to the review and agreement of Parent, and Parent and the Company shall cooperate and negotiate in good faith to resolve any dispute regarding the Estimated Closing Date Schedule prior to the Closing. No dispute or failure by Parent to dispute any matter in the Estimated Closing Date Schedule shall in any way effect or prejudice Parent's right to raise any matter in the Closing Date Schedule. The Company shall make the work papers, back-up materials and books and records used in preparing the Estimated Closing Date Schedule reasonably available to Parent and its representatives and advisors at

reasonable times and upon reasonable notice following the delivery of the Estimated Closing Date Schedule by the Company to Parent hereunder

Section 1.13 Post-Closing Adjustments

(a) **Delivery of Closing Date Schedule** Within thirty (30) days following the Closing Date, Parent shall prepare and deliver to the Designated Representative a schedule (the "Closing Date Schedule") setting forth, as of 12:01 a.m. on the Closing Date, the Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXX, XXXXXXXXXXXXXXXX and Closing Date Net Working Capital and showing all components (and the amounts thereof) necessary to compute the Closing Date Net Working Capital. The Closing Date Schedule will be prepared in good faith and in accordance with GAAP on a basis consistent with that employed in the preparation of the audited components of the Financial Statements. The Designated Representative shall have the right to review the Closing Date Schedule for a period of fifteen (15) days following the delivery of the Closing Date Schedule by Parent (the "Review Period"). Parent shall make the work papers, back-up materials and books and records used in preparing the Closing Date Schedule reasonably available to the Designated Representative and its accountants at reasonable times and upon reasonable notice following the delivery of the Closing Date Schedule by Parent to the Designated Representative hereunder.

(b) **Objections** The Designated Representative shall have the right to object to any item or computation appearing in the Closing Date Schedule by notifying Parent in writing of such objections prior to the expiration of the Review Period. Any such notice shall be accompanied by appropriate information and documentation in reasonable detail supporting the Designated Representative's calculations. If the Designated Representative does not make any such objection prior to the expiration of the Review Period, the Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX and Closing Date Net Working Capital appearing in the Closing Date Schedule (together with all components thereof, and the amounts of such components, necessary to compute the Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX and Closing Date Net Working Capital) shall be determinative for purposes of this Article I and shall be final and binding.

(c) **Resolution of Disputes** If the Designated Representative duly objects to any item or computation appearing in the Closing Date Schedule prior to the expiration of the Review Period, the items and calculations on the Closing Date Schedule as to which no objection is made prior to such date shall be final and binding, and the Designated Representative and Parent shall, during the fifteen (15) day period following the delivery of the Designated Representative's objection, attempt in good faith jointly to resolve the matters on the Closing Date Schedule to which the Designated Representative objected. In the event the Designated Representative and Parent cannot resolve all of such matters by the end of such fifteen (15) day period, such parties shall engage XXXXXXXX or such other nationally known third party accountant as the parties may mutually agree to use (the "Neutral Accountant") to resolve any items not resolved by the Designated Representative and Parent. The parties shall require the Neutral Accountant, within thirty (30) days or as soon as possible thereafter, acting as an arbitrator, to resolve only the matters objected to by the Designated Representative and not resolved by the Designated Representative and Parent with respect to the determination of the

Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX and Closing Date Net Working Capital, and the resolution by the Neutral Accountant of such matters shall be within the range of the amounts claimed in respect of each such item by the Designated Representative and Parent and shall consider only those items or amounts with respect to the Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX and Closing Date Net Working Capital as to which the Designated Representative has disagreed. All fees and expenses relating to the work, if any, to be performed by the Neutral Accountant XXXXXXXXXXXXXXXXXXXX. If either Parent or the Designated Representative fails to submit a statement regarding any unresolved objected matters submitted to the Neutral Accountant within the time determined by the Neutral Accountant or otherwise fails to give the Neutral Accountant access as reasonably requested in accordance with this Section 1.13(c), then the Neutral Accountant shall render a decision based solely on the evidence timely submitted and the access afforded to the Neutral Accountant by Parent or the Designated Representative. The Neutral Accountant will deliver to Parent and the Designated Representative a written determination (such determination to include a work sheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Neutral Accountant by Parent or the Designated Representative) of the unresolved objected matters submitted to the Neutral Accountant within thirty (30) days of receipt of such unresolved objected matters, which determination will be final, binding and conclusive and judgment may be entered on the award.

(d) Final Closing Date Schedule. The Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX and Closing Date Net Working Capital finally determined pursuant to Sections 1.13(b) or 1.13(c) shall be determinative for purposes of this Article I and shall be final and binding. All components, and the amounts of such components, necessary to compute the final and binding Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX and Closing Date Net Working Capital and the amount of such Closing Date Debt, Company Transaction Expenses, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX and Closing Date Net Working Capital are referred to herein, collectively, as the “Final Closing Date Schedule.”

Section 1.14 Subsequent Payments to Stockholders. Subject to Section 1.15, each Company Stockholder (subject, in the case of each Company Stockholder that is not a Selling Stockholder, to the prior execution and delivery of the Required Documentation by such Company Stockholder) shall be entitled to payment of its Pro Rata Portion of

(a) if the Final Aggregate Consideration is greater than the Estimated Aggregate Consideration, the amount of such difference, promptly following final determination of the Final Closing Date Schedule,

(b) XXXXXXXXXXXXXXXX, and

(c) XXXXXXXXXXXXXXXX,

(i) XXXXXXXXXXXXXXXX, and

(ii) XXXXXXXXXXXX

Section 1.15 Subsequent Payments to Parent If the Final Aggregate Consideration is less than the Estimated Aggregate Consideration, each Company Stockholder shall pay to Parent its Pro Rata Portion of the amount of such difference, promptly following final determination of the Final Closing Date Schedule, provided, that at its option Parent may elect, in lieu of payment due under this Section 1.15 from any Company Stockholder, to take payment from the Escrow Amount and/or to offset any such payment due from any Company Stockholder against payments that otherwise are or become due by Parent to such Company Stockholder pursuant to Section 1.14

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Parent and the Acquirer as set forth below

Section 2.1 Organization and Qualification The Company and each of the Company Subsidiaries is duly formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, has the requisite corporate or other power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. The Company and each of the Company Subsidiaries is in good standing and duly qualified to do business in each jurisdiction in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified does not, and could not reasonably be expected to, interfere in any material respect with the operation of the Company's Business as currently conducted. True and complete copies of the Company's and each of the Company Subsidiaries' certificate of incorporation and by-laws (or if such Subsidiary is not a corporation, its organizational documents) (collectively, the "Company's Organizational Documents"), each as amended to date and currently in full force and effect, have been made available to Parent, and no other organizational or governing documents are applicable to or binding on the Company or the Company Subsidiaries.

Section 2.2 Capitalization; Subsidiaries

(a) The authorized capital stock of the Company consists solely of 25,000 shares of Company Stock, all of which are designated as common stock. As of the date of this Agreement and as of Closing, 5,935 shares of Company Stock are issued and outstanding. All outstanding shares of Company Stock are duly authorized, validly issued, fully paid and non-assessable and are not subject to any preemptive rights or Encumbrances. Exhibit C sets forth a list, as of the date hereof, of the Company Stockholders and the number of shares of Company Stock held by each such Company Stockholder. Except as set forth in Schedule 2.2(a)(i), the Company does not have any shares of capital stock or voting securities reserved for issuance and there are no outstanding subscriptions, options, warrants, calls, rights, commitments or any other agreements (including under any employment agreements) to which the Company or any of the Company Subsidiaries is a party or by which the Company or any of the Company Subsidiaries is bound which obligate the Company to (i) issue, deliver or sell or cause to be issued, delivered

or sold any additional shares of Company Stock or any other ownership interest of the Company or any other securities convertible into, or exercisable or exchangeable for, or evidencing the right to subscribe for, any such shares of Company Stock or any other ownership interest of the Company or (ii) purchase, redeem or otherwise acquire any shares of Company Stock or any other ownership interest of the Company. Except as set forth in Schedule 2.2(a)(ii) (all of which shall be terminated as of the Closing), to the Knowledge of the Company, there are no voting trusts, stockholder agreements, registration rights agreements, proxies or other agreements or understandings in effect with respect to the voting, registration or transfer of any of the Company Stock.

(b) The Selling Stockholders own beneficially and of record in excess of XXX of the outstanding shares of the Company Stock.

(c) Schedule 2.2(c) sets forth a complete and correct list of all of the Company's Subsidiaries (each a "Company Subsidiary") and indicates the authorized, issued and outstanding capital stock or other equity securities of each such Company Subsidiary, any issued and outstanding options, warrants, stock appreciation rights, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, shares of any capital stock or other equity securities of such Company Subsidiary, all of which is owned by the Company, and any contracts, commitments, understandings or arrangements by which such Company Subsidiary may become bound to issue additional shares of its capital stock or other equity securities, or options, warrants, stock appreciation rights, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, shares of any capital stock or other equity securities of such Company Subsidiary. All outstanding shares of capital stock or other equity securities evidencing ownership of the Company's Subsidiaries are duly authorized, validly issued, fully paid and non-assessable and are not subject to any preemptive rights or Encumbrances. The Company Subsidiaries do not have any shares of capital stock or voting securities reserved for issuance and there are no outstanding subscriptions, options, warrants, calls, rights, commitments or any other agreements (including under any employment agreements) to which the Company or any of the Company Subsidiaries is a party or by which the Company or any of the Company Subsidiaries is bound which obligate the Company or any of the Company Subsidiaries to (i) issue, deliver or sell or cause to be issued, delivered or sold any additional shares of capital stock or any other ownership interest of any such Company Subsidiary or any other securities convertible into, or exercisable or exchangeable for, or evidencing the right to subscribe for, any such shares of any capital stock or any other ownership interest of any such Company Subsidiary or (ii) purchase, redeem or otherwise acquire any shares of capital stock or any other ownership interest of any such Company Subsidiary.

(d) Except as set forth in Schedule 2.2(c), upon the consummation of the Transactions the Company will not have any Subsidiaries nor will it own, directly or indirectly, any capital stock or other proprietary interest, and does not have any option or similar right to acquire any equity or other proprietary interest, in any Person. Except as set forth in Schedule 2.2(c), all such interests are owned by the Company and are held free and clear of all Encumbrances, other than Permitted Encumbrances. Neither the Company nor any of the

Company Subsidiaries is subject to any obligation or requirement to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any Person

Section 2.3 Authorization and Validity of Agreement The Company has all requisite power and authority to execute and deliver this Agreement and to perform all of its agreements hereunder, and to consummate the Transactions in accordance with the terms hereof. The Company has duly authorized the execution, delivery and performance of this Agreement and no other proceedings on the part of the Board are necessary to authorize this Agreement or the consummation of the Transactions. The Board, at a meeting duly called and held, has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Stock Sale and the Merger, are advisable, fair to and in the best interests of the holders of Company Stock, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Stock Sale and the Merger, and (iii) approved this Agreement and the transactions contemplated hereby, including the Stock Sale and the Merger, for purposes of Section 203 of the DGCL, to the extent applicable. This Agreement has been duly and validly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity.

Section 2.4 Consents and Approvals Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the Transactions will require on the part of the Company, or any of the Company Subsidiaries, any offer to purchase, consent, approval, authorization or permit of, or filing with, or notification to, any Governmental Entity or other Person, except for (i) XXXXXXXXXXXX and (iv) such other consents, approvals, filings and registrations the failure to obtain which could not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the operation of the Company's Business as currently conducted or the consummation of the Transactions or adversely impact in any material respect the value of the Company's Business as currently conducted, no consents or approvals of or filings or registrations with any Governmental Entity, or of or with any other third party, are necessary in connection with the execution and delivery by the Company of this Agreement, and the timely consummation by the Company of the Transactions. The Company has no reason to believe that any of the foregoing filings, registrations, expirations of waiting periods, approvals or consents required to consummate the Transactions (the "Requisite Approvals") will not be obtained on a timely basis.

Section 2.5 No Violations Except as set forth in Schedule 2.5, neither the execution, delivery or performance of this Agreement by the Company and its compliance with the terms hereof nor the consummation by the Company of the Transactions will (i) conflict with or violate the Company's Organizational Documents, (ii) result in a violation or breach of, constitute a default (with or without due notice or lapse of time, or both) under or require any consent under, give rise to any right of termination, cancellation, vesting, acceleration or modification of any right or obligations or loss of any benefit under, or result in the imposition of any Encumbrance, other than a Permitted Encumbrance, on any assets or property of the Company or any of the Company Subsidiaries pursuant to any contract or other obligation to which the Company or any

of the Company Subsidiaries is a party or by which the Company, any of the Company Subsidiaries, or any assets or properties of the Company or any of the Company Subsidiaries are bound, except for such violations, breaches and defaults (or rights of termination, cancellation, vesting, acceleration, modification or Encumbrance) as to which requisite waivers or consents identified in Section 2.4 have been obtained or (iii) assuming the consents, approvals, authorizations or permits and filings or notifications referred to in Section 2.4 are duly and timely obtained or made, violate any Law applicable to the Company or any of the Company Subsidiaries or any of their respective assets and properties, except in the case of each of clauses (ii) and (iii) above to the extent any such breach, violation, creation of Encumbrance, acceleration, vesting or modification does not, and could not reasonably be expected to interfere in any material respect with the operation of the Company's Business as currently conducted or the consummation of the Transactions or adversely impact in any material respect the value of the Company's Business as currently conducted

Section 2.6 Financial Statements; Undisclosed Liabilities; Indebtedness; Credit Support Arrangements; Internal Controls and Procedures

(a) True and complete copies of the Financial Statements have been previously made available to Parent. Each of the balance sheets included in the Financial Statements (including any related notes and schedules thereto) fairly presents, in all material respects, the financial position of the Company or the Company Subsidiary, as applicable, as of its date, and each of the statements of income and cash flow included in the Financial Statements (including any related notes and schedules thereto) fairly presents, in all material respects, the results of operations of the Company or the Company Subsidiary, as applicable, for the periods set forth therein, in each case in accordance with the books and records of the Company or the Company Subsidiary, as applicable, and GAAP applied on a consistent basis throughout the periods covered thereby (except that such Financial Statements which are unaudited do not contain all of the footnotes required under GAAP and are subject to normal and customary year-end adjustments, which shall not be material)

(b) Neither the Company nor any of the Company Subsidiaries has any liability or obligation, whether absolute, accrued, contingent or otherwise, which is required to be disclosed on a balance sheet prepared in accordance with GAAP or disclosed or reserved against in the notes thereto, other than (i) liabilities shown in the Financial Statements of the Company or any of the Company Subsidiaries or the notes thereto, or (ii) liabilities and obligations incurred in the ordinary course of business consistent with past practice since the Last Balance Sheet Date

(c) Neither the Company nor any Company Subsidiary has any liabilities or obligations of any kind (including any continuing indemnification obligations or guarantees) relating to the Company's ownership or disposition of the stock and/or assets of any Affiliate prior to the date hereof

(d) Except as set forth in Schedule 2.6(d), or for transactions, arrangements and other relationships otherwise specifically identified on the Financial Statements, none of the Company or any of the Company Subsidiaries has or is subject to any "Off-Balance Sheet

Arrangement” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act)

(e) Except for Indebtedness reflected in the balance sheets included in the Financial Statements or as set forth on Schedule 2.6(c), none of the Company and the Company Subsidiaries has any Indebtedness outstanding at the date hereof. Each of the Company and the Company Subsidiaries is not in default with respect to any outstanding Indebtedness or any instrument relating thereto and except as set forth on Schedule 2.6(c), no such Indebtedness or any instrument or agreement relating thereto purports to limit the operation of the Business of the Company or the Company Subsidiaries. Complete and correct copies of all instruments and agreements (including all amendments, supplements, waivers and consents) relating to any Indebtedness of the Company and the Company Subsidiaries have been furnished or made available to the Parent.

(f) Except as set forth on Schedule 2.6(f), there are no Credit Support Arrangements outstanding with respect to the Company or the Company Subsidiaries or any of their respective rights, assets or businesses.

(g) The financial books and records of the Company and the Company Subsidiaries are complete and correct in all material respects, have been maintained in accordance with good business practice, and reflect the basis for the financial position and results of operations of the Company and the Company Subsidiaries set forth in the Financial Statements.

(h) The Company and the Company Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has made available to Parent complete and correct copies of, all written descriptions of, and all policies, manuals and other documents promulgating, such internal accounting controls.

(i) XX

Section 2.7 Compliance with Law

(a) Except as set forth in Schedule 2.7(a),

(i) the Company and each Company Subsidiary are conducting, and since January 1, 2005, have conducted, their businesses in compliance, in all material respects, with all Laws applicable to them and their respective properties,

(ii) the Company and each Company Subsidiary hold, own or possess, and have been in compliance in all material respects with all permits, licenses,

variances, certifications, exemptions, authorizations, orders and approvals ("Permits") necessary to own, lease or operate their respective properties and to permit the continued lawful conduct of their businesses as now being conducted, and

(iii) the Transactions will not result in the cancellation, modification, termination or suspension of any Permit, except for any such cancellations, *modifications, terminations or suspensions which, individually or in the aggregate, are not material to the Company and the Company Subsidiaries*

(b) Schedule 2 7(b) lists

(i) all citations, notices of violations or notices of investigation resulting in any material liability (or alleging any material liability if no final determination of liability has been made) to the Company or any of the Company Subsidiaries since January 1, 2005,

(ii) all Orders and administrative or judicial enforcement proceedings from any Governmental Entity received by the Company or any of the Company Subsidiaries since January 1, 2005 involving the business or operations of the Company or any Company Subsidiary,

(iii) the results of each federal or state health or safety inspection since January 1, 2005 relating to the Company or any Company Subsidiary, including any responses thereto filed by the Company or the Company Subsidiary,

(iv) a summary of each audit (including any audits by any insurance company or carrier) relating to the safety of the Company's or Company Subsidiaries' operations (including any action plans prepared in response thereto) which, to the Knowledge of the Company, has been prepared since January 1, 2005, and

(v) XXXXXXXXXXXXXXXXXXXX

(c) Neither the Company nor any Company Subsidiary nor the conduct of any of their respective businesses is in conflict with, or in default or violation of, any applicable Laws, Permits or arbitration awards applicable to the Company or any Company Subsidiary or by which its or any of their respective properties are bound or affected, except for any such conflicts, defaults or violations which could not, individually or in the aggregate, reasonably be expected to interfere in any material respect with the operation of the Company's Business as currently conducted or the consummation of the Transactions or adversely impact in any material respect the value of the Company's Business as currently conducted

Section 2.8 Litigation, Accidents and Incidents

(a) Except as disclosed in Schedule 2 8(a), there are no claims, actions, arbitrations, judgments, decisions, settlements, writs, stipulations, decrees, lawsuits, claims of

liability, complaints, injunctions, orders, proceedings or governmental investigations (“Actions”) pending or, to the Knowledge of the Company, threatened against or affecting the Company or any Company Subsidiary

(b) Schedule 2 8(b) lists all accidents or incidents occurring subsequent to January 1, 2005 that have or reasonably could result in an Action against the Company or any Company Subsidiary, including any Federal Railroad Administration reportable injuries or derailments or damage to property

(c) The Company and the Company Subsidiaries are not subject to any outstanding and unsatisfied Orders. Each of the Company and the Company Subsidiaries has not received any written notice from any Governmental Entity of any pending or threatened Action by any Governmental Entity relating to the Company or any Company Subsidiary

Section 2.9 Employees and Employee Benefit Matters

(a) Schedule 2 9(a) sets forth a correct and complete list of all of the employees of the Company and the Company Subsidiaries as of the date hereof

(b) Except as set forth in Schedule 2 9(b), neither the Company nor any Company Subsidiary has any written or oral employment or severance agreements with any of its employees, other than oral employment agreements or written offer letters which are terminable at will

(c) Except as set forth in Schedule 2 9(c), neither the execution and delivery of this Agreement nor the consummation of the Transactions (either alone or in combination with another event) will (i) result in any payment (including severance payments) becoming due, or increase the amount of any compensation due, to any employee of the Company or any Company Subsidiary, (ii) increase any benefits otherwise payable under any Employee Benefit Plan, (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits, or (iv) result in the payment of any amount or the provision of any benefit that could, individually or in combination with any other such payment or benefit, constitute an “excess parachute payment,” as defined in Section 280G(b)(1) of the Code

(d) Neither the Company nor any Company Subsidiary has any plan, Contract or commitment, whether legally binding or not, to create any additional Employee Benefit Plan, policies or arrangements that are intended to cover employees of the Company or any Company Subsidiary or to modify any Employee Benefit Plan in a manner that could increase the benefits provided to any employees of the Company or any Company Subsidiary thereunder except for such increases that occur in the ordinary course of business consistent with past practice. Further, the execution and delivery of this Agreement will not limit or restrict the right of the Company or any Company Subsidiary to merge, amend or terminate any Employee Benefit Plan

(e) All material Employee Benefit Plans are listed in Schedule 2 9(c). With respect to each such Employee Benefit Plan, the Company has made available to the Acquirer current, accurate and complete copies of each of the following together with, when applicable, all amendments: (i) the plan document, or if the plan has not been reduced to writing, a written

summary of its material terms, (ii) if the Employee Benefit Plan is subject to the disclosure requirement of Title I of ERISA, the summary plan description, (iii) if the Employee Benefit Plan is intended to be qualified under Section 401(a) of the Code, the most recent determination letter issued by the IRS, (iv) if the Employee Benefit Plan is subject to the requirement that a Form 5500 series annual report/return be filed, the three most recently filed annual reports/returns and all exhibits attached thereto, (v) all related trust agreements, group annuity contracts and administrative service agreements and (vi) for each Employee Benefit Plan that is funded, the three most recent financial statements and actuarial reports for such Employee Benefit Plan

(f) The Employee Benefit Plans have been administered in all material respects in accordance with their terms and comply in all material respects with the requirements of ERISA and the Code. All contributions, premiums and expenses, if any, due under each Employee Benefit Plan have been timely made. Any Employee Benefit Plan intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified or has been submitted to the IRS to obtain such a determination within the applicable remedial amendment period, as defined in Treas. Reg. § 1.401(b)-1. There are no pending, nor has the Company received written notice of any threatened, claims against or involving any of the Employee Benefit Plans (other than claims for benefits in the ordinary course), and no Employee Benefit Plan is currently under governmental investigation or audit, and to the Knowledge of the Company, no such investigation or audit has been threatened. Neither the Company nor any Company Subsidiary (i) has incurred or has any liability under Title IV of ERISA or (ii) has ever maintained or contributed to any Employee Benefit Plan subject to Title IV of ERISA.

(g) Neither the Company nor any Company Subsidiary, nor, to the Knowledge of the Company, any other "disqualified person" or "party in interest" (as defined in Section 4975(e)(2) of the Code and Section 3(14) of ERISA, respectively) has engaged in any transactions in connection with any Employee Benefit Plan that would result in the imposition on the Company of a material penalty pursuant to Section 502 of ERISA, material damages pursuant to Section 409 of ERISA or a material tax pursuant to Section 4975 of the Code.

(h) To the Knowledge of the Company, each Employee Benefit Plan that is subject to Section 409A of the Code has been administered in good faith compliance with the applicable requirements of Section 409A of the Code and all applicable IRS and Treasury Department guidance issued thereunder. None of the transactions contemplated by this Agreement will constitute or result in a deferral of compensation subject to Section 409A of the Code.

(i) Except as disclosed in Schedule 2.9(i)

(i) neither the Company nor any Company Subsidiary is a party to, or bound by, any collective bargaining agreement, Contract or other agreement or understanding with a labor union or labor organization,

(ii) there are no unfair labor practice, labor arbitration or grievance proceedings pending or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary,

(iii) neither the Company nor any Company Subsidiary is delinquent in payments to any of its employees, for any wages, salaries, commissions, bonuses or other direct compensation for any services performed by the date hereof or amounts required to be reimbursed by them to the date hereof, including overtime pay or other amounts payable under federal or state wage-hour laws.

(iv) the Company and each Company Subsidiary is in compliance, in all material respects, with all applicable federal, state and local Laws, rules and regulations respecting employment, employment practices, labor, terms and conditions of employment, termination of employment, benefits, wages and hours, including the Worker Adjustment and Retraining Notification Act and those of the United States Railroad Retirement Board,

(v) each person who performs services for the Company or any Company Subsidiary has been, and is, properly classified as an employee or independent contractor under applicable Law,

(vi) no action, complaint, charge, inquiry, proceedings or investigation by or on behalf of any employee, prospective employee, former employee, labor organization or other representative of the employees of the Company or any Company Subsidiary is pending or, to the Knowledge of the Company, threatened,

(vii) neither the Company nor any Company Subsidiary has closed any plant or facility, effectuated any layoffs of employees or implemented any early retirement, separation or window program since January 1, 2005, nor has any such action or program been planned or announced for the future,

(viii) neither the Company nor any Company Subsidiary is a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Entities relating to employees or employment practices,

(ix) to the Knowledge of the Company, no labor union or labor organization is presently seeking, is threatening to seek, or has sought since January 1, 2005, to represent or organize any of the Company's or any Company Subsidiary's employees, and

(x) neither the Company nor any Company Subsidiary has experienced any labor strike, dispute, lockout, slowdown, stoppage or other labor dispute since January 1, 2005, and, to the Knowledge of the Company, none are threatened

(j) There are no Employee Benefit Plans that provide health, life insurance or other welfare benefits to retired or other terminated employees of the Company or a Company Subsidiary, other than continuation coverage required by COBRA

Section 2.10 Taxes

(a) Except as set forth in Schedule 2.10

(i) all Tax Returns required to be filed by or on behalf of the Company and/or the Company Subsidiaries have been filed (taking into account any extension of time to file), all such Tax Returns are true and correct, all Taxes required to be paid by or on behalf of the Company and/or the Company Subsidiaries, or with respect to any of their properties (whether or not shown on a Tax Return) have been paid and adequate reserves in accordance with GAAP are provided for on the Financial Statements for any Taxes not yet due and payable.

(ii) there are no proposed deficiencies or other claims for unpaid Taxes proposed, threatened or asserted against the Company or any Company Subsidiaries.

(iii) all Taxes that the Company, or any Company Subsidiaries, is required to withhold or collect (including Taxes relating to compensation or benefits provided to employees, including pursuant to the United States Railroad Retirement Board) have been duly withheld or collected and have been timely and properly paid over, as required, to the appropriate taxing authority,

(iv) there are no audits or proceedings in progress, nor to the Knowledge of the Company, pending with respect to Taxes of the Company or any of its Subsidiaries,

(v) no waivers of statutes of limitations have been given with respect to any Taxes with respect to the Company or any Company Subsidiary, which waivers are in effect as of the date hereof,

(vi) the Company has delivered or made available to Acquiror true and complete copies of (i) all Tax Returns of the Company and the Company Subsidiaries since January 1, 2002 and (ii) all private letter rulings, revenue agent reports, closing agreements, settlement agreements, deficiency notices and any similar documents submitted by, received by or agreed to by or on behalf of the Company or any of the Company Subsidiaries and related to Taxes since January 1, 2003,

(vii) no claim has been made by a taxing authority in a jurisdiction where the Company or any of the Company Subsidiaries does not file Tax Returns that any such company is or may be subject to Tax in such jurisdiction,

(viii) the Company and the Company Subsidiaries have not nor have ever been (nor does the Company or any of the Company Subsidiaries have any liability for unpaid Taxes because it once was) a member of an affiliated, consolidated, combined, unitary or similar group. The Company or any of the Company Subsidiaries is not a party to any Tax allocation, Tax indemnity or Tax

sharing agreement or is liable for the Taxes of any other person under U S Treasury Regulations §1 1502-6 (or any similar provision of state, local or foreign Law), as transferee or successor, by contract or otherwise,

(ix) the Company or any of the Company Subsidiaries will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of (i) any change in the method of accounting for a taxable period or portion thereof ending on or prior to the Closing Date, (ii) any intercompany transaction (including any intercompany transaction subject to Sections 367 or 482 of the Code) entered into on or prior to the Closing Date, (iii) any material prepaid amount received on or prior to the Closing Date or (iv) any installment sale or open transaction disposition made on or prior to the Closing Date or for any other reason,

(x) the Company and the Company Subsidiaries have collected substantially all sales, value-added and use Taxes required to be collected and have remitted on a timely basis such amounts to the appropriate taxing authorities (or have been furnished properly completed exemption certificates),

(xi) no closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign Law) has been entered into by or with respect to the Company or any of the Company Subsidiaries,

(xii) no power of attorney has been executed with respect to any matter relating to Taxes of the Company or any of the Company Subsidiaries that is currently in force,

(xiii) neither Company or any of the Company Subsidiaries has been a party to any distribution in which the parties to such distribution treated the distribution as one to which Sections 355 or 361 of the Code is applicable,

(xiv) neither the Company or any of the Company Subsidiaries has entered into any transactions that are or would be part of any "reportable transaction" under Sections 6011, 6111 or 6112 of the Code (or any similar provision under any state, local or foreign Law), and

(xv) neither the Company or any of the Company Subsidiaries has been a "United States real property holding corporation" (within the meaning of Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code

Section 2.11 Material Contracts

(a) Schedule 2.11(a) sets forth a list of all contracts, commitments, leases, plans, agreements and licenses to which the Company or any of the Company Subsidiaries is a party or by which it or its assets or rights are otherwise bound (whether written or oral) that are

material to the Company and the Company Subsidiaries, taken as a whole, including the following (collectively, the “Material Contracts”)

(i) any Contract or purchase order (other than Equipment and Machinery Leases) to sell or lease equipment or provide services to any customer that (i) provides for scheduled, fixed or guaranteed annual payments, or is reasonably expected to result in payments from or to the Company or the Company Subsidiaries, in excess of XXXXXXX in the aggregate or (ii) has a term longer than XXXXXXXXXXXX.

(ii) any Contract or agreement with any director, officer or stockholder of the Company or any entity in which any director, officer or Selling Stockholder or, to the Knowledge of the Company, any other Company Stockholder, has a XXXXXXXXXXXXXXXXXXXX or more direct or indirect interest,

(iii) any Contract providing for stock awards or other equity-based compensation awards, bonuses, pensions, deferred or incentive compensation, retirement or severance payments, profit-sharing, insurance or other benefit plans or programs for any present or former officer, consultant, director or employee of the Company or any of the Company Subsidiaries, except as otherwise expressly disclosed in any schedule to this Agreement.

(iv) any collective bargaining agreements or other agreements with any labor union,

(v) any Contract (including any lease for Equipment and Machinery) for the lease or sublease as lessee, lessor, sublessee or sublessor of Real Property or Personal Property of the Company or the Company Subsidiaries, or any Contract concerning computer software or other Company IP, requiring scheduled, fixed or guaranteed annual payments, or reasonably expected to result in payments from or to the Company or the Company Subsidiaries, in excess of XXXXXXX in the aggregate or that is otherwise material to the Company or any of the Company Subsidiaries,

(vi) except for purchase orders issued in the ordinary course of business consistent with past practice and except for contracts or commitments for or relating to the purchase of inventory or supplies in the ordinary course of business consistent with past practice, any Contract requiring payments in excess of XXXXXXX in the aggregate for the purchase or sale of any Personal Property.

(vii) any Contract that limits or purports to limit the ability of the Company or any of the Company Subsidiaries to compete in any line of business or with any Person or in any geographic area or during any period of time or that limits or purports to limit any other Person's ability to compete with the Company or any of the Company Subsidiaries, whether in any line of business or in any geographical area or during any period of time or otherwise,

(viii) any Contract concerning confidentiality, non-competition or non-solicitation of employees, except for contracts that adhere to the Company's standard form of agreement in all material respects, a copy of which has previously been provided or made available to Parent.

(ix) any Contract for Indebtedness or the guaranty, indemnity or suretyship of Indebtedness of any Person,

(x) any Contract that relates to the maintenance of railroad property pursuant to which the Company pays in excess of XXXXXXX in any twelve month period.

(xi) any Contract that relates to railroad tariffs that (i) provides for scheduled, fixed or guaranteed annual payments, or is reasonably expected to result in payments to the Company or the Company Subsidiaries in fiscal year 2008, in excess of XXXXXXXX in the aggregate or (ii) involves in excess of XXXXXXXXXXXXXXXXXXXX carloads in any one-year period,

(xii) any other Contract (or group of related Contracts) the performance of which involves consideration in excess of XXXXXXXX or which is otherwise material to the Business, and

(xiii) any license agreement for the use of any third party Intellectual Property, excluding license agreements for commercially available, off-the-shelf software

(b) The Company has delivered or made available to the Parent a correct and complete copy of each Material Contract Except as set forth on Schedule 2.4(b) and Schedule 2.5 hereof, to the Knowledge of the Company, each Material Contract is legal, valid, binding, enforceable, and in full force and effect and will continue to be legal, valid, binding, enforceable, and in full force and effect without any modification that would interfere in any material respect with the conduct of the Company's Business as currently conducted immediately following the consummation of and after giving effect to the Transactions Except as set forth on Schedule 2.4(b) and Schedule 2.5 hereof, neither the Company and the Company Subsidiaries nor, to the Knowledge of the Company, any other party to any Material Contract to which the Company or the Company Subsidiaries is a party, is in breach or default in any material respect in complying with any provisions thereof and no event has occurred which with or without notice or lapse of time, or both, would constitute a breach or default that would interfere in any material respect with the conduct of the business as currently conducted, or permit termination, modification, or acceleration under any Material Contract Except as set forth on Schedule 2.11(b), the Company has not received any written notice of the intention of any party to terminate any Material Contract, whether as a termination for convenience or for default of the Company thereunder

Section 2.12 Operational Matters

(a) Schedule 2.12(a) lists all major "on-track" equipment failures during the immediately preceding six (6) month period

(b) Schedule 2 12(b) lists, by dollar volume paid for calendar year 2007, the top twenty (20) customers of the Company and the Company Subsidiaries
XXXXXXXXXXXX

Section 2.13 Brokers and Finders In connection with the negotiation of this agreement or the consummation of the Transactions, no broker, finder, agent, investment bank or other intermediary has acted directly or indirectly for the Company, and the Company has not incurred any obligation to pay any brokerage, finder's or other fee or commission to any Person

Section 2.14 Absence of Certain Changes

(a) Except as set forth on Schedule 2 14(a), since December 31, 2007, no event, change or circumstance has occurred, which, individually or in the aggregate, has had, or could be reasonably be expected to have a Material Adverse Effect on the Company

(b) Since December 31, 2007, the Company and the Company Subsidiaries have, in all material respects, operated and conducted their respective businesses and operations in the ordinary course of business consistent with past practice and, except as set forth in Schedule 2 14(b), there has not occurred any event that, if it had taken place following the execution of this Agreement, would not have been permitted by Section 5.1

Section 2.15 Environmental Matters.

(a) Except as set forth on Schedule 2 15

(i) the Company and each Company Subsidiary are in compliance in all material respects with all, and have not violated in any material respect any, applicable Environmental Laws,

(ii) the Company and each Company Subsidiary have obtained all, and have not violated in any material respect the terms and conditions of any, material Environmental Permits required by applicable Environmental Laws,

(iii) neither the Company nor any Company Subsidiary is aware of any events, circumstances or changes in legal requirements that would reasonably be expected to prevent the Company or any Company Subsidiary from (or materially increase the burden on the Company or any Company Subsidiary of) complying with applicable Environmental Laws or obtaining, renewing or complying with all Environmental Permits required under such laws,

(iv) neither the Company nor any Company Subsidiary has received notice of any existing or pending Environmental Claim, and to the knowledge of the Company, no Environmental Claim is threatened, and the Company is not aware of any circumstances, conditions or events that could reasonably be expected to result in an Environmental Claim against the Company or any Company Subsidiary that would materially and adversely affect the Company or any Company Subsidiary,

(v) there are and have been no Materials of Environmental Concern, or other conditions, at, on, under or emanating from any property currently or, to the Knowledge of the Company, formerly owned, leased or operated by the Company or any Company Subsidiary, or at any other location (including any location used for the storage, disposal, recycling or other handling of any Materials of Environmental Concern), that could reasonably be expected to give rise to any material liability of, or result in material cost to, the Company or any Company Subsidiary arising under or relating to any Environmental Law,

(vi) neither the Company nor any Company Subsidiary has received any written request for information, or has been notified that it is a potentially responsible party, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or any similar state Law with respect to any on-site or off-site location for which liability has not been finally resolved, and

(vii) neither the Company nor any Company Subsidiary has assumed or retained any obligation under any Environmental Law or concerning any Materials of Environmental Concern that could reasonably be expected to be material to the Company or any Company Subsidiary

(b) The Company has delivered to Parent true and complete copies of all Environmental Reports containing material information that are in the possession or control of the Company or any Company Subsidiary

Section 2.16 Related Transactions

(a) Schedule 2.16(a) sets forth a correct and complete list of (i) all transactions, Contracts, Indebtedness, loans, advances or other arrangements, or any related series thereof, (other than with respect to the employment of a Company Stockholder and rail service and joint car leases with respect to Affiliates, in each case, in the ordinary course of business consistent with past practice) between any Company Stockholder or any Affiliate of a Company Stockholder or their family members, on the one hand, and the Company or any Company Subsidiary, on the other hand, since January 1, 2005 and (ii) all assets, properties and services of any Company Stockholder, or any Affiliate of a Company Stockholder or their family members, used in connection with the Company's or any Company Subsidiary's business at any time since January 1, 2005 Except as disclosed in Schedule 2.16(a), at or prior to the Closing, all such transactions, Contracts, Indebtedness, loans, advances and other arrangements shall be terminated without any liability or obligation of the Company or any Company Subsidiary There is no Indebtedness owed to the Company or any Company Subsidiary by any employee, consultant, officer or director, other than salary advances and advances of travel expenses in the ordinary course of business consistent with past practice

(b) Except as set forth in Schedule 2.16(b), each of the Contracts between any Stockholder or any Affiliate of a Company Stockholder, on the one hand, and the Company or any Company Subsidiary, on the other hand, is terminable by the Company or the Company

Subsidiary upon not more than thirty (30) days' prior written notice without the payment of any penalty or termination fee

Section 2.17 Property

(a) Schedule 2.17(a) sets forth a list of all material Leased Real Property used or occupied by the Company or a Company Subsidiary pursuant to written or verbal agreements (the "Real Property Leases") Each of the Real Property Leases is in full force and effect, unimpaired by any acts or omissions of the Company or any Company Subsidiary Each Real Property Lease constitutes the legal, valid and binding obligation of the Company or the Company Subsidiary that is party to the applicable Real Property Lease, enforceable against the Company or Company Subsidiary in accordance with its terms except (i) as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting the enforcement of creditors' rights generally or by general principles of equity, and (ii) as the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought All rent and other sums and charges payable by the Company or Company Subsidiary under each Real Property Lease are current Neither the Company, the Company Subsidiaries nor, to the Knowledge of the Company, any other party to any Real Property Lease, is in breach or default in any material respect in complying with any provisions thereof No notice of default or termination under any Real Property Lease has been received by the Company or any Company Subsidiary and no event has occurred which with or without notice or lapse of time, or both, would constitute a breach or default that would interfere in any material respect with the conduct of the Business of the Company as currently conducted, or permit termination, modification, or acceleration under any Real Property Lease

(b) Schedule 2.17(b) sets forth a list of all material Owned Real Property The Company and each Company Subsidiary has good and valid title to its respective Owned Real Property free and clear of all Encumbrances other than Permitted Encumbrances

(c) Other than as set forth in Schedule 2.17(c), the Company and each Company Subsidiary has sufficient property interests in its Real Property to operate its Business as it is operated at the date of this Agreement

(d) Except as set forth in Schedule 2.17(d), neither the Company nor any Company Subsidiary, as applicable, has entered into any Contract, commitment, lease or other agreement to sell, convey, assign or otherwise transfer any of the Real Property on which the Railroad Assets operated by the Company or the Company Subsidiaries are located

(e) Schedule 2.17(e) sets forth a list of all material tangible personal property owned by the Company, and the Company has good, valid and marketable title to all material tangible personal property owned by it, free and clear of all Encumbrances other than Permitted Encumbrances

(f) All material tangible personal property of the Company is in good working order, normal wear and tear excepted, in all material respects

(g) The Company or the Company Subsidiaries own (or in the case of leased or licensed assets or properties, have a valid right to use) all of the assets and properties of any kind or nature necessary to permit Parent to operate the Business of the Company and the Company Subsidiaries from and after the Effective Date in the same manner and to the same extent, in all material respects, as the Business is currently conducted by the Company and the Company Subsidiaries

Section 2.18 Insurance

(a) Schedule 2.18(a) sets forth a true and complete list of all policies of property, casualty, liability and other insurance (other than any insurance policies relating to the Employee Benefit Plans) in effect during the period on or after January 1, 2005, including the applicable deductibles thereunder, insuring the properties, assets, employees, officers, directors, business and/or operations of the Company and/or the Company Subsidiaries (collectively, the “Policies”) and a claims history since January 1, 2005. Such Policies cover against the risks normally insured against by entities in the same or similar lines of business as the Company and the Company Subsidiaries in coverage amounts typically and reasonably carried by such entities

(b) All Policies are valid and in full force and effect, no written notice of cancellation or termination has been received by the Company or any Company Subsidiary with respect to any such Policy, and coverage for the Company and the Company Subsidiaries under the Policies will continue until the Closing, subject to the payment by the Company of the applicable premiums. All premiums due thereunder have been paid. Neither the Company nor any Company Subsidiary is in default under any provisions of the Policies, and there is no claim by the Company or any Company Subsidiary pending under any of the Policies as to which coverage has been questioned, denied or disputed by the underwriters or issuers of such Policies

Section 2.19 Bank Accounts. Schedule 2.19 lists all bank accounts currently used or held by the Company or a Company Subsidiary and the authorized signatories associated therewith

Section 2.20 Intellectual Property

(a) The Company and each Company Subsidiary owns, free and clear of all Encumbrances, all right, title and interest in and to, or has a sufficient and legally enforceable license or other right to use, any and all Intellectual Property used in the conduct of its business and operations as currently conducted or as currently proposed to be conducted (collectively, the “Company IP”). Schedule 2.20 contains a complete and accurate list of all of the registered patents, copyrights, trademarks, material non-registered trademarks and other indicators of source, domain names, and applications to register any of the foregoing, included in the Company IP owned by the Company or any Company Subsidiary

(b) The Company and each Company Subsidiary take and have taken reasonable and appropriate steps to protect and preserve the Company IP, including the confidentiality of any trade secrets or other confidential or proprietary information or materials that comprise any part of the Company IP

(c) All registrations and applications of any Intellectual Property included in the Company IP and owned by the Company or a Company Subsidiary (i) are subsisting and have not expired or been abandoned or cancelled, and (ii) are not and will not be rendered invalid, unenforceable or otherwise negatively impacted by any public disclosure, sale, offer for sale or other activity or inactivity by the Company or any Company Subsidiary

(d) The conduct of the Company's and each Company Subsidiary's business, and their use of the Company IP owned by any of them, does not infringe upon, misappropriate, conflict with or otherwise violate the rights of any other Person and, to the Knowledge of the Company and each Company Subsidiary, no other Person is infringing on, misappropriating or otherwise violating any of the Company's or Company Subsidiary's rights in any such Company IP. As of the date hereof, there is no suit, claim, action, investigation or proceeding made, pending, conducted, brought, or, to the Knowledge of the Company, threatened, by a Person alleging any such infringement, misappropriation, conflict or violation, by the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary is subject to any Order that restricts or impairs the use of the Company IP.

(e) The Company and each Company Subsidiary have valid licenses providing for the necessary number of authorized users for all of the software forming part of the Company IP or off-the-shelf software used by the Company or any Company Subsidiary in the conduct of its business.

Section 2.21 Exclusive Dealing Neither the Company nor any Company Subsidiary is a party to any contract, commitment or other agreement relating to any Takeover Proposal.

Section 2.22 Regulatory Matters

(a) The Company and each of the Company Subsidiaries have filed all regulatory reports, schedules, forms, statements, registrations and other documents, together with any amendments required to be made with respect thereto, that they were required to file since January 1, 2005 with (i) any domestic or foreign industry self-regulatory organization ("SRO") and (ii) any other federal, state or foreign governmental or regulatory agency or authority (collectively with all SROs, "Regulatory Agencies"), and have timely paid all Taxes, fees and assessments due and payable in connection therewith. Except as disclosed in Schedule 2.22 and for normal examinations conducted by a Regulatory Agency in the regular course of business of the Company and the Company Subsidiaries, no Regulatory Agency has initiated any proceeding or, to the Knowledge of the Company, investigation into the business or operations of the Company or any of the Company Subsidiaries since January 1, 2005. There is no material unresolved violation, criticism or exception by any Regulatory Agency with respect to any report or statement relating to any examinations of the Company or any of the Company Subsidiaries.

(b) Neither the Company nor any Company Subsidiary is subject to any cease and desist or other order issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is party to any commitment letter or similar undertaking to, or is subject to any order or directive issued by, or is a recipient of any supervisory letter from or has adopted any resolution of its board of directors at the request of, any Regulatory Agency or other Governmental Entity that restricts the conduct of its business or that in any manner

relates to its capital adequacy, its credit policies, its management or its business (each, whether or not set forth in the schedules to this Agreement, a "Company Regulatory Agreement"). nor has the Company or any of the Company Subsidiaries been advised since January 1, 2005, by any Regulatory Agency or other Governmental Entity that it is considering issuing or requesting any such Company Regulatory Agreement

Section 2.23 Condition of Lines; Personal Property Except as set forth on Schedule 2.23, the physical condition of the Rail Facilities is sufficient, in all material respects, to operate the Business as currently operated. All Personal Property of the Company and the Company Subsidiaries necessary to operate the Business as it is currently conducted is in working order as of the date hereof and is suitable for the purposes for which it is being used (taking into account ordinary wear and tear and the need for ordinary and routine maintenance and repairs). Each of the Company and the Company Subsidiaries has or will on the Closing Date have good and valid title, free and clear of all Encumbrances (except for Permitted Encumbrances), or valid leasehold interests or rights under contract to use, all Personal Property owned, leased or used in the Business.

Section 2.24 No Voting Requirements No vote or written consent of the holders of any class or series of the Company's capital stock is necessary, whether under applicable Law or otherwise, to approve and adopt this Agreement and the Transactions.

Section 2.25 State Takeover Statutes The Company has, or will have prior to the Effective Time, taken all necessary action so that no "business combination," "moratorium," "fair value," "control share acquisition" or other state antitakeover statute or regulation, including Section 203 of the DGCL and applicable provisions of the Mississippi Code of 1972, as amended, will be applicable to this Agreement or the Transactions by reason of the Company being a party to this Agreement, performing its obligations hereunder or consummating the Transactions.

Section 2.26 Rail Facilities and Related Contracts The Company and the Company Subsidiaries hold sufficient indefeasible property interests and indefeasible operating rights in and to the rail lines depicted on the maps referenced in Schedule 2.26, and to the adjacent yards, spur tracks and other rail facility appurtenances thereto (collectively, the "Rail Facilities") to permit the Company and the Company Subsidiaries to conduct rail freight operations on and over the Rail Facilities as such operations are conducted by the Company and the Company Subsidiaries on the date of this Agreement. The individual parcels of land that constitute the Rail Facilities of each line are contiguous to each other, with no gaps or strips, from one end point of each line to the other end point of each such line. Furthermore, the Railroad Assets, as of the date of this Agreement, comprise the assets necessary, in all material respects, to operate the Businesses as currently operated and consistent with past practice. Neither the Company nor any of the Company Subsidiaries is a party to any Contract or subject to any Order that would deprive the Company or any of the Company Subsidiaries of the ability to operate substantially as the Company and the Company Subsidiaries operate over the Rail Facilities on the date of this Agreement, or that would deprive the Company or any of the Company Subsidiaries of the ability to (i) serve directly all customers that may be served directly by them on the date of this

Agreement or (ii) interchange with the carriers listed on Schedule 2.26 at or near the locations listed on Schedule 2.23

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLING STOCKHOLDERS

Each of the Selling Stockholders, severally and not jointly, represents and warrants to the Parent and the Acquirer as set forth below

Section 3.1 Organization and Qualification Such Selling Stockholder (unless an individual) is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and such Selling Stockholder has all requisite corporate or other power and authority, or capacity, as the case may be, to own or lease and operate its properties and to carry on its business as now conducted

Section 3.2 Authorization and Validity of Agreement Such Selling Stockholder has all requisite power and authority, or capacity, as the case may be, to execute and deliver this Agreement and to perform all of its agreements and obligations hereunder, and to consummate the Transactions, whether or not such Selling Stockholder is a natural person. This Agreement, whether or not such Selling Stockholder is a natural person, has been duly authorized, executed and delivered by such Selling Stockholder. This Agreement, whether or not such Selling Stockholder is a natural person, constitutes the legal, valid and binding obligation of such Selling Stockholder, enforceable against such Selling Stockholder in accordance with its terms, except as such validity, binding effect or enforceability may be limited by bankruptcy, insolvency and similar Laws affecting creditor's rights generally or equitable principles relating to the availability of remedies

Section 3.3 No Violations The execution and delivery of this Agreement by such Selling Stockholder, the performance and compliance by such Selling Stockholder with the terms hereof, and the consummation of the Transactions will not conflict with, result in a breach or violation of, constitute a default (with or without due notice or lapse of time or both) under, or give rise to any Encumbrance on the Company Stock held by such Selling Stockholder under (a) any provision of the charter or By-Laws or the comparable organizational documents, if any, of such Selling Stockholder (other than an individual), (b) any Law applicable to such Selling Stockholder, or such Selling Stockholder's respective properties or assets, including the Company Stock held by such Selling Stockholder, or (c) any contract, commitment, lease, agreement, mortgage, note, bond, indenture or other instrument or obligation to which such Selling Stockholder is a party or by which it or its assets, including the Company Stock held by such Selling Stockholder, is bound

Section 3.4 Consents and Approvals Except as set forth in Schedule 2.5 and assuming the consents, approvals, authorizations or permits and filings or notifications referred to in Section 2.4 are duly and timely obtained or made, no consent, notice, approval, waiver, license or other authorization or action by or filing, registration or qualification with any Governmental Entity or any other Person (including any party to any agreement with such Selling Stockholder) is required in connection with the execution and delivery by such Selling

Stockholder of this Agreement, the consummation by such Selling Stockholder of the Transactions, or the performance by such Selling Stockholder of its obligations hereunder

Section 3.5 Title to Company Stock All shares of capital stock of the Company set forth opposite such Selling Stockholder's name on Exhibit C are owned beneficially and of record as of the date hereof and as of the Closing Date by such Selling Stockholder, as the case may be, and are free and clear of any Encumbrances. In addition, XXXXXXXXXXXXXXXXXXXX On the Closing Date, such Selling Stockholder will transfer its Company Stock to Acquirer free and clear of all Encumbrances

Section 3.6 Investment Decision Such Selling Stockholder has relied upon, and is making its decision to sell its Company Stock solely upon, such Selling Stockholder's independent review and evaluation of this Agreement in consultation with such Selling Stockholder's financial, legal and tax advisors. Such Selling Stockholder has sought and received such advice of financial, legal and tax advisors as it deemed appropriate prior to entering into this Agreement

Section 3.7 Brokers and Finders No agent, broker, Person, investment bank or firm is or will be entitled to any advisory, commission or broker's or finder's fee or commission in connection with any of the Transactions based on arrangements made by or on behalf of such Selling Stockholder

Section 3.8 Litigation Except as set forth in Schedule 3.8 and except as would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or impede the ability of such Selling Stockholder to consummate the Transactions, there are no (a) Orders against such Selling Stockholder or its Affiliates or (b) Actions pending or, to the knowledge of such Selling Stockholder, threatened in law or in equity, or before any Governmental Entity, against such Selling Stockholder or its Affiliates

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE ACQUIRER

The Parent and the Acquirer represent and warrant to the Company and the Selling Stockholders as set forth below

Section 4.1 Organization and Qualification The Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate or other power and authority to own or lease and operate its properties and to carry on its business as now conducted. The Acquirer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate or other power and authority to own or lease and operate its properties and to carry on its business as now conducted

Section 4.2 Authorization and Validity of Agreement Each of the Parent and the Acquirer has all requisite corporate power and authority to execute and deliver this Agreement and to perform all of its agreements and obligations hereunder in accordance with its terms. This

Agreement and the Transactions have been duly authorized by the board of directors of the Parent and the Acquirer. This Agreement has been duly executed and delivered by each of the Parent and the Acquirer. This Agreement constitutes the legal, valid and binding obligation of the Parent and/or the Acquirer, as applicable, enforceable against the Parent and/or the Acquirer, as applicable, in accordance with its terms, except as such validity, binding effect or enforceability may be limited by bankruptcy, insolvency and similar laws affecting creditor's rights generally or equitable principles relating to the availability of remedies.

Section 4.3 No Violations The execution and delivery of this Agreement, the performance and compliance by the Parent and the Acquirer with the terms hereof and the consummation of the Transactions, and receipt of the consents and approvals referred to in Section 4.4, will not conflict with or result in any breach or violation of or default (with or without due notice or lapse of time or both) or creation of any Encumbrance under, or the acceleration, vesting or modification of any right or obligation under (a) any provision of the charter, By-Laws or other organizational documents of the Parent or the Acquirer, (b) any Law applicable to the Parent or the Acquirer or (c) any contract, commitment, lease, agreement, mortgage, note, indenture or other instrument or obligation to which the Parent or the Acquirer is a party or by which it or its assets are bound, in each case except to the extent any such breach, violation, creation of Encumbrance, acceleration, vesting or modification would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or impede the ability of the Parent and the Acquirer to consummate the Transactions.

Section 4.4 Consents and Approvals Except for (i) the filing of any required applications or notices with the Governmental Entities as set forth in Schedule 4.4 and approval of such applications and notices, including, without limitation, the STB's exemption approval of the control by Parent of the Company, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, (iii) the filing with the U S Securities and Exchange Commission of such reports under the Exchange Act, as may be required in connection with the execution and delivery of this Agreement, (iv) the third party consents and notices set forth on Schedule 4.4 and (v) such other consents, approvals, filings and registrations the failure to obtain which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or impede the ability of the Parent and the Acquirer to consummate the Transactions, no consents or approvals of or filings or registrations with any Governmental Entity, or of or with any third party, are necessary in connection with the execution and delivery by Parent and Acquirer of this Agreement, and the consummation by Parent and Acquirer of the Transactions.

Section 4.5 Brokers and Finders No agent, broker, Person, investment bank or firm is or will be entitled to any advisory, commission or broker's or finder's fee or commission from the Company or any Selling Stockholder in connection with any of the Transactions based on arrangements made by or on behalf of Parent or the Acquirer.

Section 4.6 Financial Ability XXXXXXXXXXXXXXXX

ARTICLE V

CERTAIN OTHER COVENANTS OF THE PARTIES

Section 5.1 Conduct of Business Prior to Effective Time During the period from the date of this Agreement to the Effective Time, except as expressly required or permitted by this Agreement, the Company shall, and shall cause each of the Company Subsidiaries to, (a) *conduct its business in the usual, regular and ordinary course consistent with past practice and in compliance in all material respects with applicable Laws*, (b) use reasonable best efforts to maintain and preserve intact its assets, business organization, employees and business relationships and goodwill with third parties and retain the services of its key officers and key employees and (c) take no action which would materially adversely affect or delay in any respect the ability of either Parent or the Company to obtain any necessary approvals of any Regulatory Agency or other Governmental Entity or any Third Party Consent required for the Transactions or to perform its covenants and agreements under this Agreement Except as set forth on Schedule 5.1, without the prior written consent of the Parent, between the date hereof and the Effective Time, the Company shall not take any of the following actions or permit any of the Company Subsidiaries to take any of the following actions

(i) make any material change in the conduct of the business of the Company or enter into any transaction other than in the ordinary course of business consistent with past practice,

(ii) (1) make any change in its Certificate of Incorporation and By-Laws, partnership agreements, limited liability company agreements and certificates of formation (or comparable organizational documents, as applicable), and (2) issue any additional equity interests or grant any option, warrant, other equity-based award or right to acquire any equity interests or issue any security convertible into or exchangeable for equity interests or alter in any way any of its outstanding equity interests or make any change in outstanding equity interests or the capitalization of the Company or any of the Company Subsidiaries, whether by reason of a reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, stock dividend or otherwise, or enter into any agreement or understanding with respect to the sale or voting of its capital stock,

(iii) make any sale, assignment, transfer, abandonment or other conveyance or disposition of the assets, properties or rights (including any Company IP) of the Company or any of the Company Subsidiaries or any material part thereof, except transactions pursuant to Contracts in effect on the date hereof that are disclosed on Schedule 5.1(iii) and dispositions of inventory or of worn-out or obsolete equipment for fair or reasonable value in the ordinary course of business consistent with past practice,

(iv) subject any of the assets, properties or rights of the Company or any of the Company Subsidiaries, or any part thereof, to any Encumbrance or suffer such to exist, other than (A) Permitted Encumbrances and (B) such

Encumbrances as may arise in the ordinary course of business consistent with past practice by operation of applicable Law and that will not, individually or in the aggregate, be or reasonably be expected to be material to the Company or any of the Company Subsidiaries,

(v) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of the equity interest of the Company or any of the Company Subsidiaries or declare, set aside or pay any dividends or other distribution in respect of such equity interest of the Company or any of the Company Subsidiaries (other than dividends and distributions of cash by a direct or indirect wholly owned Subsidiary to the Company),

(vi) acquire any assets, raw materials or properties with a value or purchase price in excess of XXXXXXXX in the aggregate, other than in the ordinary course of business consistent with past practice, or acquire any voting or non-voting equity securities or similar ownership interests in any Person (other than a Company Subsidiary), whether by merger, consolidation, purchase or otherwise,

(vii) (1) establish, adopt, enter into, amend or terminate any Employee Benefit Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be an Employee Benefit Plan if it were in existence as of the date of this Agreement, except to the extent that any such amendments are required by applicable Law, are necessary to preserve the tax-qualified status of any Employee Benefit Plan or do not result in an increase in benefits for the present or former directors, officers or employees of the Company or any of the Company Subsidiaries, (2) grant any increase in the compensation or fringe benefits of any present or former directors, consultants, officers or employees of the Company or any of the Company Subsidiaries (including any such increase pursuant to any bonus, pension, profit-sharing or other plan or commitment), except in accordance with preexisting contractual provisions or for increases in salary or wages in the ordinary course of business consistent with past practice (but any such increase which will exceed XXXXXXXX must be approved by the Parent), (3) grant any severance or termination pay to any present or former director, officer or employee of the Company or any of the Company Subsidiaries, and (4) loan or advance money or other property to any present or former directors, officers or employees of the Company or any of the Company Subsidiaries,

(viii) pay, lend or advance any amount to, or sell, transfer or lease any properties or assets to, or enter into any agreement or arrangement with, any Affiliates,

(ix) make any investment, either by purchase of securities, contribution to capital, property transfer or purchase of any property or assets of any Person (other than a wholly owned Subsidiary),

(x) take any other action which the Company or any of the Company Subsidiaries reasonably expects would cause any of the representations and warranties made by the Company in this Agreement not to remain true and correct in any material respect,

(xi) make any change in any method of accounting or accounting principle, method, estimate or practice or write down the value of any inventory or write off as uncollectible any accounts receivable or any portion thereof, except as required by GAAP,

(xii) make, change or revoke any election or method of accounting with respect to Taxes affecting or relating to the Company or any of the Company Subsidiaries, file any amended Tax Return, surrender any right to claim a Tax refund, enter into any closing or other agreement or settlement with respect to Taxes affecting or relating to the Company or any of the Company Subsidiaries, agree to an extension of the statute of limitations with respect to the assessment or determination of any Taxes or take any other material action with respect to Taxes,

(xiii) enter into any plan of liquidation or dissolution or file 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 applicable Law,

(xiv) settle, compromise, release or forgive any Indebtedness, claim or litigation or waive or release any right thereto,

(xv) make, enter into, modify, amend in any material respect or terminate any Contract or bid that, if in effect on the date hereof, would be a Material Contract, or otherwise waive, release or assign any material rights, claims or benefits thereunder,

(xvi) amend, terminate or surrender any Lease, or fail to exercise any rights of renewal with respect to any material Lease,

(xvii) create, incur, issue, assume, guarantee or otherwise become liable for (whether directly, contingently or otherwise) any Indebtedness (including Credit Support Arrangements) or issue any instrument convertible, exercisable or exchangeable for Indebtedness, or enter into any "keep-well" or other agreement to maintain the financial condition of another Person, or any other arrangement having the economic effect of any of the foregoing,

(xviii) make or commit to make any capital expenditure in excess of XXXXXXXX individually or XXXXXXXX in the aggregate, or addition to property, plant or equipment used in its operations, other than ordinary repairs and emergency maintenance,

(xix) lay off any employees or hire more than XXXXXXXX employees,

(xx) grant, amend, modify, extend or terminate any trackage rights agreement, haulage agreement, power-run-through agreement, marketing agreement, joint facilities agreement or other agreement with carriers materially affecting the operations on, or marketing of traffic to, from or over, the Rail Facilities,

(xxi) abandon or discontinue service over all or any portion of the Rail Facilities, or commence a regulatory proceeding to facilitate any such abandonment or discontinuance,

(xxii) enter into any new line of business or discontinue any material line of business,

(xxiii) enter into, materially amend or renew any agreement with a shipper or receiver for movement of traffic over the Rail Facilities,

(xxiv) enter into any agreement with a shipper or receiver that would cause or facilitate the diversion of a material amount of traffic from the Rail Facilities, or

(xxv) enter into or cause or permit the Company or any of the Company Subsidiaries to enter into any agreement or commit to take any action prohibited by clauses (i) through (xxiv)

Section 5.2 Reasonable Best Efforts

(a) Each of Parent and the Company shall, and shall cause their respective Subsidiaries to, use their reasonable best efforts (i) to take, or cause to be taken, all actions necessary, proper or advisable to comply promptly with all legal requirements which may be imposed on such party or any of their respective Subsidiaries with respect to the Transactions and, subject to the conditions set forth in Articles VI and VII hereof, to consummate the Transactions and (ii) to obtain (and to cooperate with the other party to obtain) any consent, authorization, Order or approval of, or any exemption by, any Governmental Entity, Regulatory Agency and any other third party which is required to be obtained by such party or any of the their Subsidiaries in connection with the Transactions

(b) The parties hereto shall cooperate with each other (except with respect to the STB, which is governed by Section 5 2(c)) and use their reasonable best efforts to promptly prepare and file all necessary documentation, to effect all applications, notices, petitions and filings, to identify and obtain as promptly as practicable all consents, approvals and authorizations of all Governmental Entities and any other third parties which are necessary or advisable to consummate the Transactions, and to comply fully with the terms and conditions of all such consents, approvals and authorizations of all such Governmental Entities. Parent and the Company shall have the right to review in advance, and, to the extent practicable, each will consult with the other on, in each case subject to applicable Laws relating to the exchange of information, all the information relating to the Company or Parent, as the case may be, and any of their respective Subsidiaries, which appear in any filing made with, or written materials

submitted to, any Governmental Entity or any other third party in connection with the Transactions. The parties hereto agree that they will reasonably consult with each other with respect to the obtaining of all Permits, consents, approvals and authorizations of all Governmental Entities, Regulatory Agencies and other third parties necessary or advisable to consummate the Transactions and each party will keep the other reasonably apprised of the status of matters relating to completion of the Transactions. Subject to consultations with the Company, Parent shall have final authority over the development, presentation and conduct of any proceedings before such Governmental Entities, Regulatory Agencies and other third parties, including over decisions whether to agree to or acquiesce in any conditions or restrictions. The Company shall take no regulatory or legal action in connection with such Governmental Entities, Regulatory Agencies or other third parties without Parent's prior written consent.

(c) Parent, on the one hand, and the Company, on the other, shall, and Parent shall cause its Subsidiaries to, (i) cooperate with one another to prepare and promptly present to the STB all filings and other presentations in connection with seeking any STB approval, exemption or other authorization necessary to consummate the Transactions and (ii) use reasonable efforts to prosecute such filings and other presentations and keep the other party apprised of the status of matters relating to the STB. Subject to consultations with the Company and, after giving good faith consideration to the views of the Company, Parent shall have final authority over the development, presentation and conduct of all matters before the STB in connection with the Transactions, including over decisions as to whether to agree to or acquiesce in any conditions or restrictions. The Company shall take no regulatory or legal action in connection with the STB without Parent's prior written consent.

(d) Parent and the Company shall, upon reasonable request, furnish each other with all information concerning themselves, their Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any Governmental Entity in connection with the Transactions.

Section 5.3 Access to Information

(a) Upon reasonable notice and subject to applicable Laws relating to the exchange of information, the Company shall, and shall cause each Company Subsidiary to, afford to the officers, employees, accountants, counsel and other representatives ("Representatives") of Parent, complete access, during normal business hours during the period prior to the Effective Time, to all its personnel, properties, books, contracts, commitments and records and, during such period, the Company shall, and shall cause each Company Subsidiary to, make available to Parent and such other Persons (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of applicable Law (other than reports or documents which Company is not permitted to disclose under applicable Law) and (ii) all other information concerning its business, properties and personnel as Parent may reasonably request, in all cases so that Parent may have full opportunity to make such investigations as it desires of the affairs and assets of the Company and the Company Subsidiaries. Neither the Company nor any of the Company

Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would violate applicable Law

(b) Parent shall hold all information furnished by or on behalf of the Company or any of the Company Subsidiaries or their Representatives pursuant to **Section 5.3(a)** in confidence to the extent required by, and in accordance with, the provisions of the confidentiality agreement, dated September 26, 2007 between Parent and the Company

Section 5.4 Additional Agreements In case at any time either prior to or after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement or any other transaction contemplated hereby or to vest the Surviving Corporation with full title to all properties, assets, rights, approvals, immunities and franchises of any of the parties to the Merger, the proper officers and directors of each party to this Agreement and their respective Subsidiaries shall take all such necessary action as may be reasonably requested by Parent

Section 5.5 No Solicitation XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 5.6 Stockholder Litigation XXXXXXXXXXXXXXXXXXXXXXXX

Section 5.7 Takeover Provisions The Company will take all steps necessary to exempt (or continue the exemption of) the Stock Sale, the Merger and the other Transactions from, challenge the validity of and otherwise act to eliminate or minimize the effects of any applicable state takeover Law (including Section 203 of the DGCL), as now or hereafter in effect

Section 5.8 Financial Statements As promptly as practicable and in any event no later than thirty (30) days after the end of each calendar month ending after the date hereof and before the Closing Date, the Company will deliver to the Parent true and complete copies of the unaudited combined balance sheet of the Company and its consolidated Subsidiaries and the related statements of income and retained earnings and cash flows as of and for such calendar month and the portion of the fiscal year then ended which financial statements shall be prepared in accordance with GAAP

Section 5.9 Resignation of Directors and Officers. Each Selling Stockholder that is a director and officer of the Company hereby agrees, if requested by Parent, to resign its positions with the Company on or prior to the Closing Date and shall execute such appropriate documentation with respect to the transfer or establishment of bank accounts, signing authority, and other similar matters, as Parent reasonably requests

Section 5.10 Public Announcements Following the execution of this Agreement, the Company and Parent shall mutually agree on the form and timing of an initial joint press release to be issued regarding this Agreement. Parent and the Company shall consult with and obtain the approval of the other party before issuing any press release or other public announcement with respect to the Merger or this Agreement and shall not issue any such press release prior to such consultation and approval, except as may be required by applicable Law, including the rules and regulations of any national securities exchange or national automated quotation system, in

which case the party proposing to issue such press release or make such public announcement shall use its commercially reasonable efforts to consult in good faith with the other party before issuing any such press release or making any such public announcement

Section 5.11 Notification of Certain Matters

(a) The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of the occurrence or non-occurrence of any event the occurrence or non-occurrence of which results in any representation or warranty contained in this Agreement being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, then untrue or inaccurate in any respect) and any failure of the Company, Parent or Acquirer, as the case may be, to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it hereunder, provided, however, that the delivery of any notice pursuant to this Section 5.11 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice. The Company shall promptly advise Parent of any event, effect, change or development that could reasonably be expected to have a Material Adverse Effect on the Company

(b) Each of the Company and Parent shall give prompt notice to the other of (i) any notice or other communication from any Person alleging that the approval of such Person is or may be required in connection with this Agreement or the consummation of the Transactions, (ii) any notice or other communication from any Governmental Entity in connection with this Agreement or the consummation of the Transactions, (iii) any Claim, relating to or involving or otherwise affecting such party that relates to this Agreement or the consummation of the Transactions or (iv) any fact, event, change, development, circumstance, condition or effect that is likely to delay or impede the ability of such party to consummate the Transactions or to fulfill their respective related obligations

(c) The Company shall give prompt notice to Parent of, to the Knowledge of the Company, the occurrence of a default or event that, with notice or lapse of time or both, would become a default under any Material Contract of the Company

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

Section 5.12 Company Transaction Expenses XXXXXXXXXXXXXXXXXXXX

Section 5.13 Delivery of Corporate Records Prior to the Effective Time, the Company shall deliver to Parent correct and complete copies of all minute books of all stockholders, board of directors and committee meetings, corporate seals, stock ledgers, true and complete copies of the Certificate of Incorporation and By-laws (or similar organizational documents), and other similar records and items reasonably requested by Parent of the Company and the Company Subsidiaries, including all stock certificates or similar evidence of ownership

of the common stock or other equity interests held by the Company, directly or indirectly, of all the Company Subsidiaries

Section 5.14 Restrictions on Transfers of Seller Stock XXXXXXXXXXXXXXXXXXXX

Section 5.15 Stockholder Release XXXXXXXXXXXXXXXXXXXX

Section 5.16 Additional Agreements In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each party to this Agreement shall take all such necessary action reasonably requested by any other party hereto

Section 5.17 Tax Matters.

- (a) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- (b) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- (c) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 5.18 Employees

- (a) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX

(b) The Company currently maintains a 401(k) Plan (the “Company 401(k) Plan”) At the sole option of Parent, the Company 401(k) Plan will either (1) be merged with an existing retirement plan of Parent upon or following the Closing Date, (2) continue in effect upon and following the Closing Date, or (3) be terminated immediately prior to the Closing Date and distributed to vested employees of the Company in accordance with the terms of the Company 401(k) Plan after the normal and customary contributions have been made consistent with past practices Upon the Closing Date, all Continuing Employees will be eligible to enter (or continue participation in) Parent’s or the Surviving Corporation’s retirement plans, based on the provisions set forth in the respective plans All Continuing Employees will be granted full credit for all prior service with the Company for eligibility purposes for the plans

(c) Other Company benefit plans will continue through the Closing Date Thereafter, all retained employees will be eligible to participate in all Parent employment benefit plans not set forth in (a) and (b) hereof covering similarly situated employees of Parent, based on the provisions set forth in the plans, to the extent that the corresponding Company benefit plans are discontinued following the Closing Date

(d) The Company shall be responsible for notifying its employees of the terms of this Agreement as it affects and/or relates to them and for complying with any applicable Laws regarding such notices

(c) Notwithstanding the agreements of Parent contained in clauses (a) through (d) of this Section 5.18, nothing contained herein, whether express or implied, shall be construed to create any third-party beneficiary rights to any present or former employee, independent contractor or any such person's alternate payees, dependents or beneficiaries, whether in respect of continued service, compensation benefits or otherwise

Section 5.19 Financial Ability XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 5.20 Contract Extensions XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 5.21 Non-Competition Each of XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXX (each a "Non-Compete Person") hereby agrees that for a period of XXXXXXXXXXXXXXXX after the Closing Date, such Non-Compete Person shall not directly or indirectly, including in his individual capacity or through any entity, (i) XXXXXXXXXXXXXXXX

ARTICLE VI

CONDITIONS PRECEDENT TO PARENT'S AND ACQUIRER'S OBLIGATIONS

Notwithstanding the provisions of Article I, the Parent and the Acquirer shall be obligated to perform the acts contemplated for performance by them under Article I only if each of the following conditions is satisfied at the Closing Date, unless any such condition is waived in writing by the Parent and the Acquirer

Section 6.1 Accuracy of Representations and Warranties by the Company and Selling Stockholders XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 6.2 Compliance by the Company The Company and the Selling Stockholders shall each have performed and complied in all material respects with all covenants, agreements and obligations under this Agreement required to be performed or complied with prior to or at the Closing. Parent and Acquirer shall have received a certificate from the chief executive officer of the Company (with respect to performance by the Company) and the Designated Representative (with respect to performance by the Selling Stockholders) to such effect

Section 6.3 Delivery of Certificate of Merger The Company shall have duly executed and delivered the Certificate of Merger

Section 6.4 No Pending Litigation XXXXXXXXXXXXXXXXXXXXXXXX

Section 6.5 Consents and Approvals The Company shall have received all Requisite Approvals and Parent shall have received the STB's exemption approval of the control by Parent of the Company

Section 6.6 Absence of Material Adverse Effect Since XXXXXXXXXXXXXXXXXXXX, there shall not have occurred any event, change or circumstance

that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect on the Company

Section 6.7 FIRPTA Parent shall have received copies of certifications executed by the Company, which certifications shall be in the form attached hereto as Exhibit D certifying such facts as to establish that the Transactions are exempt from withholding pursuant to Section 1445 of the Code

ARTICLE VII

CONDITIONS PRECEDENT TO COMPANY'S AND SELLING STOCKHOLDERS' OBLIGATIONS

Notwithstanding the provisions of Article I, the Company and the Selling Stockholders shall be obligated to perform the acts contemplated for performance by them under Article I only if each of the following conditions is satisfied at or prior to the Closing Date, unless any such condition is waived in writing by the Company and Designated Representative

Section 7.1 Accuracy of Representations and Warranties by the Parent and the Acquirer XX

Section 7.2 Compliance by the Parent and the Acquirer The Parent and the Acquirer shall have performed and complied in all material respects with all of their covenants, agreements and obligations under this Agreement to be performed or complied with by them on or before the Closing Date. The Company shall have received a certificate from an executive officer of each of the Parent and Acquirer to the foregoing effect

Section 7.3 No Pending Litigation XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Indemnity by Company Stockholders XXXXXXXXXXXXXXXXXXXXXXX

Section 8.2 Indemnification for Taxes and Undisclosed Liabilities
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Section 8.3 Claims

(a) Any Indemnified Party shall promptly notify the Designated Representative (which shall act on behalf of any or all Company Stockholders for purposes of any claims contemplated by this Article VIII) of any action, suit, proceeding, demand or breach (a "Claim") with respect to which the Indemnified Party claims indemnification hereunder pursuant to Section 8.1 or Section 8.2 hereof. For purposes of this Agreement, the term "Indemnifying Party" shall mean any Company Stockholder that is an indemnifying party pursuant to, and in accordance with, the provisions of this Article VIII. Any failure of the Indemnified Party to give any notice required under this Section 8.3(a) shall not relieve the

Indemnifying Party of its obligations under this Article VIII, except to the extent that the defense of such Claim is materially prejudiced by such failure

(b) If such Claim relates to any action, suit, proceeding or demand instituted against the Indemnified Party by a third party other than with respect to Taxes (a "Third Party Claim"), then the Designated Representative, on behalf of the Company Stockholders or the applicable Company Stockholder, shall be entitled to participate in the defense of such Third Party Claim at its own expense. Within twenty (20) days after the Indemnified Party gives written notice of such Third Party Claim pursuant to Section 8.3(a), the Designated Representative, on behalf of the Company Stockholders or the applicable Company Stockholder, may assume the defense of such Third Party Claim with counsel reasonably satisfactory to the Indemnified Party by providing the Indemnified Party with written notice of its election to assume such defense and acknowledgement that such Third Party Claim is subject to indemnification in favor of the Indemnified Party. Prior to the assumption of such defense by the Indemnifying Party, the Indemnified Party shall be entitled to take reasonable actions as may be necessary or advisable to preserve any and all rights of the Indemnified Party and the Indemnifying Party with respect to any Third Party Claim pending a determination by the Indemnifying Party as to whether or not to assume the defense of such Third Party Claim pursuant to, and in accordance with, the provisions of this Section 8.3(b), and, so long as the Indemnified Party has given written notice of such Third Party Claim pursuant to Section 8.3(a), the Indemnifying Party shall be responsible for the costs (including the reasonable fees and expenses of one legal counsel) incurred by the Indemnified Party in connection with such reasonable actions to the extent that such reasonable actions are taken after such written notice is given. Notwithstanding the right of the Indemnified Party to retain its own counsel as described below, the Designated Representative on behalf of the applicable Indemnifying Party shall have the authority to negotiate, compromise and settle such Third Party Claim if and only if the following conditions are satisfied:

(i) the Designated Representative, on behalf of the Company Stockholders, or the applicable Company Stockholder, shall have confirmed in writing that the Company Stockholders are, or the applicable Company Stockholder is, as the case may be, obligated hereunder to indemnify the Indemnified Party with respect to such Third Party Claim, and

(ii) the Designated Representative, on behalf of the Company Stockholders, or the applicable Company Stockholder, shall not, without the consent of the Indemnified Party, consent to the entry of any judgment or settle any such Third Party Claim unless the Indemnified Party is unconditionally released from all liability in respect of such Third Party Claim, the judgment or settlement is solely for monetary damages and does not involve any finding or admission by the Indemnified Party of any violation of Law and the Indemnified Party receives assurances that there will be no continuing restrictions on the business of the Indemnified Party with respect to such Third Party Claim.

The Indemnified Party shall retain the right to employ its own counsel and to participate in the defense of any Third Party Claim, the defense of which has been assumed by the

Designated Representative, on behalf of the Company Stockholders or the applicable Company Stockholder pursuant hereto, but the Indemnified Party shall bear and shall be solely responsible for its own costs and expenses in connection with such participation, unless (1) the Indemnified Party has been advised by counsel that representation of the Indemnified Party and the Indemnifying Party by the same counsel could present a conflict of interest under applicable standards of professional conduct, (2) the Indemnified Party has been advised by counsel that there may be legal defenses available to it which are different from or in addition to the defenses available to the Indemnifying Party and in the reasonable judgment of such counsel it is advisable for the Indemnified Party to employ separate counsel or (3) the Indemnifying Party shall have failed to prosecute such defense in good faith. In no event will the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to any Third Party Claim for which it seeks indemnification hereunder without the prior written consent of the Designated Representative, on behalf of the Company Stockholders or the applicable Company Stockholder (which consent shall not be unreasonably withheld, conditioned or delayed)

Section 8.4 Limitations on Indemnification

- (a) XX
- (b) XX
- (c) XX
- (d) XX
- (e) XX
- (f) XX
- (g) XX

Section 8.5 Offset Against Subsequent Payments Due to Parent
XXXXXXXXXXXXXXXXXXXX

Section 8.6 Release of Escrow Amount XXXXXXXXXXXXXXXXXXXXXXXX

ARTICLE IX

TERMINATION

Section 9.1 Termination This Agreement may be terminated at any time prior to the Closing

- (a) XX,
- (b) XX,
- (c) XX,

(d) XX

Section 9.2 Effect of Termination XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**ARTICLE X****DEFINITIONS**

Section 10.1 Glossary of Defined Terms The definitions of the following terms may be found in the Section references set forth opposite each such term

<u>Defined Terms</u>	<u>Section</u>	<u>Defined Terms</u>	<u>Section</u>
Acquirer	Preamble	Contract	10 2
Actions	2 8(a)	Credit Support Arrangements	10 2
Affiliate	10 2	Designated Representative	1 11(a)
XXX	1 14(c)(ii)	DGCL	Recitals
Agreement	Preamble	Dissenting Shares	1 7(a)
Board	Recitals	Effective Date	1 4
Business	Recitals	Effective Time	1 4
XXX	1 14(c)(i)	Employee Benefit Plan	10 2
XXXXXXXXXXXXXXXXXX	10 2	Encumbrance	10 2
Certificate of Merger	10 2	Environmental Claim	10 2
Certificates	1 6(a)	Environmental Laws	10 2
Change of Control Payments	10 2	Environmental Permits	10 2
Claim	8 3(a)	Environmental Report	10 2
Closing	1 1	Equipment and Machinery	10 2
Closing Date	1 1	ERISA	10 2
Closing Date Debt	10 2	Escrow Account	10 2
Closing Date Net Working Capital	10 2	Escrow Agent	10 2
Closing Date Outstanding Shares	10 2	Escrow Agreement	10 2
Closing Date Schedule	1 13(a)	Escrow Amount	10 2
Closing Per Share Amount	10 2	Escrow Period	10 2
Code	10 2	Estimated Adjustment Amount	10 2
XXXXXXX	10 2	Estimated Aggregate Consideration	10 2
Company	Preamble	XXXXXXXXXXXXXXXXXX	1 12
Company 401(k) Plan	5 18(b)	Estimated Closing Date Debt	1 12
Company IP	2 20(a)	Estimated Closing Date Net	
Company Regulatory Agreement	2 22(b)	Working Capital	1 12
Company Stock	Recitals	Estimated Closing Date Schedule	1 12
Company Stockholder	10 2	XXXXXXXXXXXXXXXXXX	1 12
Company Subsidiary	2 2(c)	Estimated Company Transaction	
Company Transaction Expenses	10 2	Expenses	1 12
Company's Organizational		Final Adjustment Amount	10 2
Documents	2 1	Final Aggregate Consideration	10 2
Confirmation Date	10 2	Final Closing Date Schedule	1 13(d)

PUBLIC VERSION – (REDACTED)

Financial Statements	10 2	Policies	2 18(a)
XXXXXXXXXXXXXXXXXX	10 2	Pro Rata Portion	10 2
GAAP	10 2	Rail Facilities	2 26
Governmental Entity	10 2	Railroad Assets	10 2
Indebtedness	10 2	Real Property	10 2
Indemnified Party	8 1	Real Property Leases	2 17(a)
Indemnifying Party	8 3(a)	Regulatory Agencies	2 22(a)
Intellectual Property	10 2	Released Parties	5 15
IRS	10 2	Representatives	5 3(a)
Knowledge	10 2	Required Documentation	1 6(a)
Knowledge of the Company	10 2	Requisite Approvals	2 4
Last Balance Sheet Date	10 2	Review Period	1 13(a)
Law	10 2	Securities Act	10 2
Leased Real Property	10 2	Seller Stock	Recitals
Losses	8 1	Selling Stockholders	Preamble
Material Adverse Effect	10 2	XXXXXXXXXXXXXX	1 14(c)(1)
Material Contracts	2 11(a)	XXXXXXXXXXXXXX	10 2
Materials of Environmental		SRO	2 22(a)
Concern	10 2	STB	10 2
Merger	Recitals	Stock Sale	1 2
Neutral Accountant	1 13(c)	Straddle Period	5 17(a)
Non-Compete Person	5 21	Subsidiary(ies)	10 2
Order	10 2	Surviving Corporation	Recitals
Owned Real Property	10 2	Takeover Proposal	10 2
Parent	Preamble	Tax	10 2
Paying Agent	10 2	Tax Return	10 2
Payment Amount	10 2	Termination Date	9 1(b)
Permits	2 7(a)(11)	Third Party Claim	8 3(b)
Permitted Encumbrances	10 2	Third Party Consents	2 4
Person	10 2	Total Consideration	10 2
Personal Property	10 2	Transactions	10 2

Section 10.2 Defined Terms As used herein the following terms not otherwise defined have the following respective meanings

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person As used in this definition the term “control” (including the terms “controlled by” and “under common control with”) means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person

“XXXXXXXXXXXXXXXXXX”

"Certificate of Merger" means a customary form of certificate of merger to effect a merger of the Acquirer and the Company pursuant to the DGCL

"Change of Control Payments" means any payments that are required to be made by the Company or any Company Subsidiary upon the execution of this Agreement or resulting from or in any way conditioned upon the consummation of the Transactions (including any such payments to directors, officers, employees or consultants of the Company or any Company Subsidiary, contractual counterparties and Governmental Entities)

"Closing Date Debt" means the aggregate amount of all Indebtedness of the Company and the Company Subsidiaries, including all principal, accrued interest, fees, reimbursement obligations, make whole, prepayment or similar penalties which would be payable if such Indebtedness were paid in full on such date, and any other expenses or obligations thereunder

"Closing Date Net Working Capital" (which may be a negative number) means the current assets of the Company and the Company Subsidiaries minus XXXXXXXXXXXXXXXX

"Closing Date Outstanding Shares" means the shares of Company Stock issued and outstanding immediately prior to the Closing (other than shares of Company Stock held by the Company as treasury stock, if any)

"Closing Per Share Amount" means XXXXXXXXXXXXXXXX

"Code" means the Internal Revenue Code of 1986, as amended

"XXXXXXXXXXXXXXXXXXXX"

"Company Stockholder" means any holder of record of shares of Company Stock outstanding immediately prior to the Closing, provided, however, that the term "Company Stockholder" shall not include any holder of Dissenting Shares in respect of those Dissenting Shares

"Company Transaction Expenses" means XXXXXXXXXXXXXXXX

"Contract" means any written note, bond, mortgage, indenture, lease, contract, agreement, obligation or commitment

"Credit Support Arrangements" means arrangements in which guaranties (including guaranties of performance or payment under agreements, commitment, obligations and permits), letters of credit or other credit or credit support arrangements, including bid bonds, advance payment bonds, performance bonds, payment bonds, retention and/or warranty bonds or other bonds or similar instruments, were or are issued, entered into or otherwise put in place by any Person other than any of the Company or the Company Subsidiaries to support or facilitate, or otherwise in respect of, the obligations of the Company or the Company Subsidiaries or agreements, commitment, obligations and permits of the Company or the Company Subsidiaries

“Employee Benefit Plan” means each plan, program, policy, payroll practice, contract, agreement or other arrangement providing for employment, change in control benefits, compensation (including deferred compensation), severance, termination or retention pay, retirement or pension benefits, welfare benefits, death benefits, transaction bonus, employee loan, performance awards, incentive awards, stock or stock-related awards, fringe benefits, insurance, short and long term disability, medical, vacation pay, cafeteria plan or other employee benefits of any kind to or for the benefit of any current or former employees, directors or consultants of the Company or any Company Subsidiary, including, without limitation, each “employee benefit plan”, within the meaning of Section 3(3) of ERISA and any collective bargaining agreements entered into by the Company or any Company Subsidiary

“Encumbrance” means any title defect or objection, lien, pledge, mortgage, deed of trust, security interest, claim (whether or not made, known or contingent), judgment, lease, license, charge, pledge, option, escrow, right of first refusal or offer, preemptive right, conditional sale or other title retention agreement, easement, encroachment or other real estate declaration, covenant, condition, restriction or servitude, transfer restriction under any stockholder or similar agreement, encumbrance or any other restriction or limitation whatsoever, in each case other than Permitted Encumbrances

“Environmental Claim” means any claim, action, demand, or notice by or on behalf of, any Governmental Entity or Person alleging potential liability under, or a violation of, any Environmental Law, or potential liability arising out of the presence of or exposure to any Materials of Environmental Concern

“Environmental Laws” means any and all Laws regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health

“Environmental Permits” means any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization pursuant to or required under any Environmental Law

“Environmental Report” means any report, study, assessment, audit or other similar document that addresses any issue of actual or potential noncompliance with, actual or potential liability under or cost arising out of, or actual or potential impact on business in connection with, any Environmental Law or any proposed or anticipated change in or addition to Environmental Law, that may affect the Company or any of its Subsidiaries

“Equipment and Machinery” means all the material equipment, machinery, furniture, fixtures and improvements, tooling, spare parts, supplies and vehicles (including all locomotives, cars, tractors, trailers, vans and all other transportation rolling stock) owned, leased or used (except third-party locomotives and rolling stock used pursuant to AAR interchange rules) by the Company or any of the Company Subsidiaries

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended

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“Estimated Adjustment Amount” (which may be a negative number) means
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“Estimated Aggregate Consideration” means XXXXXXXXXXXXXXXXXXXX

“Final Adjustment Amount” (which may be a negative number) means
XXXXXXXXXXXXXXXXXX

“Final Aggregate Consideration” means XXXXXXXXXXXXXXXXXXXX

“Financial Statements” means (i) with respect to the Company XXXXXXXXXXXXXXXX

“GAAP” means United States generally accepted accounting principles which are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, in effect for the applicable fiscal year

“Governmental Entity” means any government or any court, arbitral tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, federal, state, local, transnational or foreign

“Indebtedness” means, as applied to any Person, at any particular time, without duplication, all (a) indebtedness of such Person for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money, (b) obligation of such Person evidenced by any note, bond, debenture, debt security or similar instrument, (c) indebtedness of such Person for the deferred purchase price of assets, property or services with respect to which such Person is liable, contingently or otherwise, as obligor or otherwise (other than current trade payables and other current liabilities incurred in the ordinary course of business which are not more thirty (30) days past due), (d) obligations, contingent or otherwise, under acceptance, letter of credit or other credit support obligations, (e) obligations under capitalized or financing leases with respect to which such Person is liable as obligor or guarantor, (f) liabilities under any interest rate, commodity, currency or other hedge or swap agreement, derivative instrument, or other hedging arrangement, (g) all direct or indirect guarantee, support or keep well obligations in respect of obligations of the kind referred to in clauses (a) through (f) above, and (h) all obligations of the kind referred to in clauses (a) through (g) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Encumbrance on assets, rights or property (including accounts and contract rights) owned by the Company or any Subsidiary, whether or not such Person has assumed or become liable for the payment of such obligation, provided that Indebtedness shall not include any of items above to the extent made or incurred by the Company solely in favor of a wholly owned Subsidiary of the Company

“Intellectual Property” means all U S or foreign intellectual property, including (i) patents, trademarks, service marks, trade names, domain names, other source indicators and the goodwill of the business symbolized thereby, copyrights and works of authorship in any medium and designs, (ii) inventions, processes, know-how and software and (iii) trade secrets and other proprietary or confidential information

“IRS” means the Internal Revenue Service

“Knowledge” or **“Knowledge of the Company”** (including all correlative terms such as known, knows, etc) means, with respect to any particular matter, XXXXXXXXXXXXX

“Last Balance Sheet Date” means December 31, 2007

“Law” means any law, statute, ordinance, rule (including common law), regulation, Order, settlement agreement, guideline, code, decree or other legally enforceable requirement of any Governmental Entity, and includes rules and regulations of any regulatory or self-regulatory authority

“Leased Real Property” means the real property leased, subleased, licensed or otherwise occupied by the Company or any Company Subsidiary, together with, to the extent leased, subleased, licensed or otherwise used by the Company or any Company Subsidiary, all buildings and other structures, facilities or improvements now or subsequently located thereon, all fixtures, systems and equipment attached or appurtenant thereto

“Material Adverse Effect” means, XXXXXXXXXXXXXXXXXXXXXXXX

“Materials of Environmental Concern” means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, hazardous substances, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, molds, pollutants, contaminants, radioactivity, and any other substances of any kind, regulated pursuant to or that could give rise to liability under any Environmental Law

“Order” means any judicial or administrative judgment, decision, decree, order, settlement, injunction, writ, stipulation, determination, charge or award, or binding arbitral award

“Owned Real Property” means the real property or interests in real property owned by the Company or any Company Subsidiary, together with all buildings and other structures, facilities or improvements now or subsequently located thereon, all fixtures, systems and equipment of the Company or any Company Subsidiary attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing

“Paying Agent” means, if Parent determines to engage a paying agent for purposes of distributing the Estimated Aggregate Consideration or Final Aggregate Consideration, the paying agent (or substitute or successor thereto) so engaged by Parent

“Permitted Encumbrances” means XXXXXXXXXXXXXXXXXXXXXXXX

“Person” means any corporation, association, partnership, limited liability company, organization, business, individual, government or political subdivision thereof or governmental agency

“Personal Property” means all furniture, fixtures, Equipment and Machinery and other items of tangible personal property

“Pro Rata Portion” of any amount and for any Company Stockholder means
XXXXXXXXXXXXXX

“Railroad Assets” means all assets, properties and rights (including the Rail Facilities), real and personal, of the Company and its Subsidiaries

“Real Property” means, collectively, the Leased Real Property and the Owned Real Property

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder

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“STB” means the Surface Transportation Board of the United States Department of Transportation

“Subsidiary(ies)” means, with respect to any Person, any corporation a majority (by number of votes) of the outstanding shares of any class or classes of which shall at the time be owned by such Person or by a Subsidiary of such Person, if the holders of the shares of such class or classes (a) are ordinarily, in the absence of contingencies, entitled to vote for the election of a majority of the directors (or persons performing similar functions) of the issuer thereof, even though the right so to vote has been suspended by the happening of such a contingency, or (b) are at the time entitled, as such holders, to vote for the election of a majority of the directors (or persons performing similar functions) of the issuer thereof, whether or not the right so to vote exists by reason of the happening of a contingency

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“Tax” means any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, withholding, payroll, employment, excise, severance, stamp, capital stock, occupation, property, environmental or windfall profits tax, or any other like assessment, charge, tax or levy of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any tax authority responsible for the imposition of any such tax (domestic or foreign) whether disputed or not, and including any liability in respect of Taxes as a transferee or under any Tax sharing agreement, Tax indemnity agreement or other Contract, arrangement, agreement, understanding or commitment (whether oral or written) and any liability in respect of Taxes that is payable by operation of law, Treas Reg Section 1.1502-6 (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise

“Tax Return” means any return, declaration or information return relating to Tax, including any schedule or attachment thereto, and including any amendment thereto, required to be filed with any tax authority

“Total Consideration” means XXXXXXXXXX

“Transactions” means the transactions contemplated by this Agreement, including the Stock Sale and Merger

Section 10.3 Interpretation and Rules of Construction

In this Agreement, except to the extent otherwise provided or that the context otherwise requires

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated,

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement,

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

(d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement,

(e) references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section,

(f) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein,

(g) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms,

(h) references to a Person are also to its successors and permitted assigns, and

(i) the use of “or” is not intended to be exclusive unless expressly indicated otherwise

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.1 Amendments This Agreement may be amended only pursuant to an agreement in writing between the Parent, the Designated Representative, and one or more Selling Stockholder(s) holding a majority of the outstanding shares of Company Stock, provided that such written agreement states that it is an amendment of this Agreement

Section 11.2 Expenses All expenses incurred by any party hereto shall be borne by the party incurring the same

Section 11.3 Notices Any notice expressly provided for under this Agreement shall be in writing, and shall be deemed to have been duly given if (a) delivered personally (effective upon delivery), (b) mailed by registered or certified mail, return receipt requested, postage prepaid (effective five (5) days after dispatch), (c) sent via a reputable, established courier service that guarantees next business day delivery (effective the next business day after delivery to such courier) or (d) sent via telecopier or e-mail followed within 24 hours by confirmation by one of the foregoing methods (effective upon the transmission of the telecopy or e-mail in complete, readable form) addressed as set forth below. Any party and any representative designated below may, by notice to the others, change its address for receiving such notices

Address for notices to Parent and Acquirer

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with a copy to

XXXXXXXXXXXXXXXXXXXXXXX

Address for notices to the Company

XXXXXXXXXXXXXXXXXXXXXXX

with a copy to

XXXXXXXXXXXXXXXXXXXXXXX

Address for notices to any Company Stockholder(s) and/or the Designated Representative

XXXXXXXXXXXXXXXXXXXXXXX

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Section 11.4 Assignment and Benefits of Agreement This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, but may not be assigned by any of the foregoing without the written consent of Parent, in the case of any

Company Stockholder or the Designated Representative, and the Designated Representative, in the case of Parent or the Acquirer Except as aforesaid and except for provisions set forth in this Agreement which purport to grant rights to Persons who are not parties hereto, nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto and their successors and assigns, any rights under or by reason of this Agreement

Section 11.5 Entire Agreement This Agreement, including all Exhibits, Schedules and Recitals hereto, contains the entire understanding of the parties, supersedes all prior agreements and understandings relating to the subject matter hereof and thereof

Section 11.6 Severability In the event that any covenant, condition, or other provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed to be severable from the remainder of this Agreement and shall in no way affect, impair, or invalidate any other covenant, condition, or other provision contained herein

Section 11.7 Governing Law XXXXXXXXXXXXXXXX

Section 11.8 Jurisdiction and Venue XXXXXXXXXXXXXXXXXXXX

Section 11.9 No Strict Construction The parties hereto have participated jointly in the negotiation and drafting of this Agreement Each of the parties hereto represents to the other party hereto that it has discussed this Agreement with its counsel In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement

Section 11.10 Counterparts This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument

Section 11.11 Specific Performance The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the parties shall be entitled to seek specific performance on the terms hereof, in addition to any other remedy at law or equity

PUBLIC VERSION – (REDACTED)

IN WITNESS WHEREOF, the parties hereto have duly executed this Stock Purchase and Merger Agreement as of the date and year first above written

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