PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36802

MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC, ET AL. —CONTROL EXEMPTION— HONDO RAILWAY, LLC

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 C.F.R. § 1180.2(D)(2)

Terence M. Hynes
Marc A. Korman
Stephen S. Laudone
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
thynes@sidley.com

Attorneys for Macquarie Infrastructure Partners V GP, LLC, MIP V, MIP V Rail, LLC, Pinsly Holdco, LLC, and Pinsly Railroad Company, LLC

Dated August 28, 2024

Filing Contains Color Images

PUBLIC VERSION

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SURFACE TRANSPORTATION BOARD

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MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC, ET AL.
—CONTROL EXEMPTION—
HONDO RAILWAY, LLC

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(D)(2)

Macquarie Infrastructure Partners V GP, LLC ("MIP GP") submits this Verified Notice of Exemption ("Verified Notice") pursuant to 49 C.F.R. § 1180.2(d)(2) for the benefit of the Macquarie Infrastructure Partners V fund vehicle ("MIP V"), MIP V Rail, LLC ("MIP Rail"), Pinsly Holdco, LLC,[1] and Pinsly Railroad Company,

[1] As part of the overall transaction at issue in this Notice of Exemption, a new non-carrier holding company will be placed between Pinsly and MIP Rail in the upstream ownership structure of the common carrier railroads discussed further herein. Because the inclusion of such an intermediate subsidiary does not constitute a change of control, no Board approval is required. *See, e.g., Hainesport Transp. Grp., LLC—Corp. Fam. Transaction Exemption,* Docket No. FD 36184, at 1 (STB served May 24, 2018) ("When a proposed transaction will not result in a cognizable change in control, the agency has determined that 'the mere insertion of a noncarrier holding company in the chain of control is a transaction outside the scope of section 11343(a) [now § 11323(a)] and not subject to its prior approval.'" (*citing RailAmerica, Inc.—Corp. Fam. Transaction Exemption—Huron & E. Ry.*, Docket No. FD 32068, slip op. at 1 (ICC served June 18, 1992))); *Trans Rail Holding. Co.—Acquisition of Control Exemption—Vermont Ry., et al.,* Docket No. FD 36390, at 2 (STB served May 8, 2020) ("In the 2006 transaction, the Sellers merely inserted TRHC, a noncarrier holding company, in the chain of control between the Sellers and the railroads they own.").

LLC ("Pinsly"),[2] all non-carriers, to acquire control of Hondo Railway, LLC ("HRC"), a Class III common carrier freight railroad. HRC is currently controlled by Mark Holland and Donald Lee.[3]

Pursuant to an Agreement dated as of August 27, 2024 (the "Purchase Agreement"), Pinsly has agreed to acquire 100% of the equity interests of HRC (the "Transaction"). Pinsly currently controls six rail common carriers, Grenada Railroad, LLC ("GRYR"),[4] Florida Gulf & Atlantic Railroad, LLC ("FG&A"),[5] Camp Chase Rail, LLC ("Camp Chase"),[6] Chesapeake and Indiana Railroad, LLC ("CKIN"),[7] Vermilion Valley Railroad Company LLC ("VVRC"),[8] and Pioneer Valley Railroad Company, LLC ("PVRR").[9]

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[2] On May 1, 2024, Gulf & Atlantic Railways, LLC, a non-carrier, was renamed Pinsly Railroad Company, LLC. There was no change of control as a result of the rebranding.

[3] *See Hondo Ry.—Lease and Operation Exemption—Rail Lines in Medina Cnty., Tex.*, Docket No. FD 34901, *Verified Notice of Exemption* (STB filed July 20, 2006).

[4] *See Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada R.R. and Fla., Gulf & Atl. R.R.*, Docket No. FD 36566 (STB served Dec. 10, 2021 and Apr. 7, 2022).

[5] *Id.*

[6] *See Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Camp Chase Rail, LLC, Chesapeake & Ind. R.R., & Vermilion Valley R.R.*, Docket No. FD 36685 (STB served Apr. 7, 2023).

[7] *Id.* CKIN was formerly known as Chesapeake and Indiana Railroad Company, Inc.

[8] *Id.* VVRC was formerly known as Vermilion Valley Railroad Company.

[9] *See Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Pioneer Valley R.R.*, Docket No. FD 36720 (STB served Sept. 13, 2023). PVRR was formerly known as Pioneer Valley Railroad Company, Inc.

HRC is the lessee of 13,200 feet of track in the vicinity of Hondo in Medina County, Texas (the "Line"). In a concurrently filed Notice of Exemption, HRC is converting its lease of the Line into fee ownership and it will continue to operate it with no change in service subsequent to that conversion and the instant Transaction.[10]

As explained further below, HRC does not connect with any of the railroads (GRYR, FG&A, Camp Chase, CKIN, VVRC, or PVRR) that would be in the same corporate family following the Transaction; the Transaction is not part of a series of anticipated transactions that would connect HRC to any of those railroads; and the Transaction does not involve a Class I carrier. Accordingly, the Transaction is exempt under the Board's regulations at 49 C.F.R. § 1180.2(d)(2).

The information required by 49 C.F.R. § 1180.4(g) is set out below.

1180.6(a)(1)(i) ***A description of the proposed transaction, including . . . a brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.***

On August 27, 2024, Pinsly entered into a Purchase Agreement with Mark Holland and Donald Lee pursuant to which Pinsly will acquire 100% of the equity interests of HRC. Upon consummation of the Transaction, Pinsly (directly) and MIP GP, MIP V, MIP Rail, and Pinsly Holdco, LLC (each indirectly) will control HRC as

[10] *See* Verified Notice of Exemption, *Hondo Ry.—Acquisition Exemption—Rail Line in Medina Cnty., Tex.*, Docket No. FD 36803 (Aug. 28, 2024).

well as GRYR, FG&A, Camp Chase, CKIN, VVRC, and PVRR.[11]

HRC operates the Line, consisting of approximately 13,200 feet of track subject to the Board's jurisdiction in Texas, which serves several terminal facilities in the vicinity of Hondo, Medina County, Texas.[12] Following this change of control and the related acquisition of the Line pursuant to the transaction that is the subject of the Verified Notice of Exemption in FD 36803, HRC will continue to operate and also own the track.

GRYR owns and operates a 228-mile rail line in Mississippi.[13] FG&A owns and operates 430 miles of track (including 373 main line miles) in Florida and Georgia.[14] Camp Chase operates approximately 14 miles of track in Ohio.[15] CKIN owns and operates approximately 28 miles of track in northwestern Indiana.[16]

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[11] Because Pinsly will be wholly owned by Pinsly Holdco, LLC, which will be wholly owned by MIP Rail, which in turn is wholly owned (indirectly) by MIP V, which is controlled by MIP GP, MIP GP, MIP V, MIP Rail, and Pinsly Holdco, LLC, may be deemed to (indirectly) control HRC, as well as GRYR, FG&A, Camp Chase, CKIN, VVRC, and PVRR for purposes of 49 U.S.C. § 11323 following consummation of the Transaction.

[12] *See Hondo Ry.—Lease and Operation Exemption—Rail Lines in Medina Cnty., Tex.*, Docket No. FD 34901, (STB served Aug. 16, 2006).

[13] *See Grenada R.R.—Acquisition & Operation Exemption—N. Cent. Miss. Reg'l R.R. Auth. & Grenada Ry.*, Docket No. FD 36700 (STB served May 25, 2023).

[14] *See RailUSA, LLC and Am. Rail Partners, LLC—Continuance in Control Exemption—Fla. Gulf & Atl. R.R.*, Docket No. FD 36248 (STB served Dec. 21, 2018).

[15] *See Camp Chase Rail, LLC—Acquisition & Operation Exemption—Camp Chase Ry.*, Docket No. FD 36414 (STB served July 1, 2020).

[16] *See Chesapeake & Ind. R.R.—Lease & Operation Exemption—N. Ind. R.R.*, Docket No. FD 36702 (STB served May 26, 2023); *Gulf & Atl. Rys.—Intra-Corp. Fam.*

VVRC operates approximately 8.4 miles of track (including approximately 7.81 main line miles) in east-central Illinois and west-central Indiana.[17] And PVRR operates approximately 27 miles of track—including 18 mainline miles—in Massachusetts.[18] Each of these railroads is a Class III carrier.

Pinsly, a Delaware limited liability company, is wholly owned by Pinsly Holdco, LLC, a Delaware limited liability company, which is wholly owned by MIP Rail. MIP Rail, a Delaware limited liability company, is wholly owned (indirectly) by MIP V, a Delaware limited liability company. MIP V is controlled by MIP GP, a Delaware limited liability company.

As the foregoing description of HRC's rail lines demonstrates, HRC does not connect with the lines of GRYR, FG&A, Camp Chase, CKIN, VVRC, or PVRR. Indeed, none of the other railroads in the Pinsly corporate family operate in the state of Texas, where the Line operated by HRC is located. Furthermore, the Transaction is not part of a series of anticipated transactions that would connect HRC with any rail carrier owned or controlled by Pinsly, MIP GP, MIP V, MIP Rail, Pinsly Holdco, LLC, or any of their respective affiliates. Finally, neither HRC nor any of the railroads currently controlled by Pinsly is a Class I carrier. Accordingly,

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Transaction Exemption—Chesapeake & Ind. R.R. and N. Ind. R.R., Docket No. FD 36760 (STB served Mar. 1, 2024).

[17] *See Vermilion Valley R.R.—Operation Exemption—FNG Logistics Co.*, Docket No. FD 34340 (STB served May 16, 2003); *Vermilion Valley R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, Docket No. FD 36350 (STB served Oct. 18, 2019).

[18] *See Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Pioneer Valley R.R.*, Docket No. FD 36720 (STB served Sept. 13, 2023).

this Transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2) and is exempt from prior approval by the Surface Transportation Board.

The names and business addresses of Applicants are as follows:

Pinsly Railroad Company, LLC
245 Riverside Ave, Suite 250
Jacksonville, FL 32202
Attention: Ryan Ratledge
(561) 448-2050

MIP GP
MIP V
MIP V Rail, LLC
Pinsly Holdco, LLC
125 W. 55th Street, 15th Floor
New York, NY 10019
Attention: Henry Blackford
(646) 415-1551

Applicants' Counsel:

Terence M. Hynes
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
thynes@sidley.com

1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

The parties intend to consummate the Transaction as soon as practicable after the effective date of this Verified Notice and the satisfaction of all other conditions precedent to closing set forth in the Purchase Agreement.

1180.6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

Pursuant to the Transaction, Pinsly will acquire a 100% ownership interest in HRC. Pinsly will bring significant financial strength, management expertise, and short line railroad operating experience to the future operation and business of HRC. MIP GP and its affiliates are experienced asset managers with a focus on infrastructure in the transportation, communications, utilities, and energy sectors. The Transaction will enhance HRC's access to capital, facilitating continued investment in its rail lines.

HRC will continue to serve customers located along the Line and to interchange traffic with the carriers with which it currently connects. HRC has a physical interchange with Union Pacific and BNSF can also interchange with HRC via trackage rights over the Union Pacific obtained in connection with Union Pacific's acquisition of the Southern Pacific.[19] MIP V's considerable infrastructure investment capabilities, and Pinsly's rail operating experience, will assist HRC in maintaining and growing its rail businesses.

1180.6(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

HRC operates entirely in the state of Texas.

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[19] *See Union Pac. Corp., et al.—Control and Merger—S. Pac. Rail Corp., et al.*, Docket No. FD 32760, at 56 (STB served Aug. 6, 1996) ("[I]n the BNSF agreement entered into in connection with the UP/SP proceeding, section 4a provides BNSF with trackage rights over SP's line between San Antonio and Eagle Pass.").

1180.6(a)(6) ***Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.***

A map depicting HRC's rail lines is attached as Exhibit 1.

1180.6(a)(7)(ii) ***Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.***

A copy of the Purchase Agreement is attached as Exhibit 2.[20]

1180.4(g)(i) ***Level of Labor Protection to be Imposed***

HRC, and each of the carriers currently controlled by Pinsly, are Class III rail carriers. Therefore, in accordance with 49 U.S.C. § 11326(c), the labor protection provisions of 49 U.S.C. § 11326 do not apply to the present Transaction.

1105.6 ***Environmental Impacts***

49 C.F.R. § 1105.6(c) provides that no environmental documentation will normally be prepared where a transaction will not result in a "significant change in carrier operations" and does not exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5). The Transaction involves only a change in corporate control of HRC and will not result in any operational changes. Therefore, the Transaction will not result in changes that exceed the relevant thresholds, and pursuant to the Board's regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

[20] Applicants are filing simultaneously with this Verified Notice a Motion for Protective Order to protect commercially sensitive information in the Purchase Agreement from public disclosure.

This action will not affect either the quality of the human environment or energy conservation.

1150.8 Historic Impacts

Prior Board approval or exemption would be required if, in the future, Applicants proposed to abandon or discontinue rail service over any portion of the Line. Applicants have no plans to dispose of or alter any property that is subject to the Board's jurisdiction and is 50 years old or older. Accordingly, pursuant to the Board's regulations at 49 C.F.R. § 1105.8(b)(1), this Verified Notice does not require a historic report.

1180.4(g)(3)(i) Interchange Commitments

The Purchase Agreement does not include any provision that would limit the future interchange of traffic with any third-party connecting carrier.[21]

[21] Section 1180.4(g)(3)(i), which refers to "acquisition or operation of a rail line," does not explicitly apply to a transaction involving the acquisition of control of a carrier. In any event, there is no interchange commitment in connection with the transaction that is the subject of this Verified Notice.

* * *

For the foregoing reasons, Applicants respectfully request that the Board publish the requisite Notice of Exemption.

Respectfully submitted,

/s/ Terence M. Hynes
Terence M. Hynes
Marc A. Korman
Stephen S. Laudone
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
thynes@sidley.com

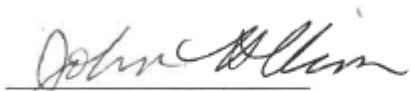
Attorneys for Macquarie Infrastructure Partners V GP, LLC, MIP V, MIP V Rail, LLC, Pinsly Holdco, LLC, and Pinsly Railroad Company, LLC

Dated August 28, 2024

PUBLIC VERSION

VERIFICATION

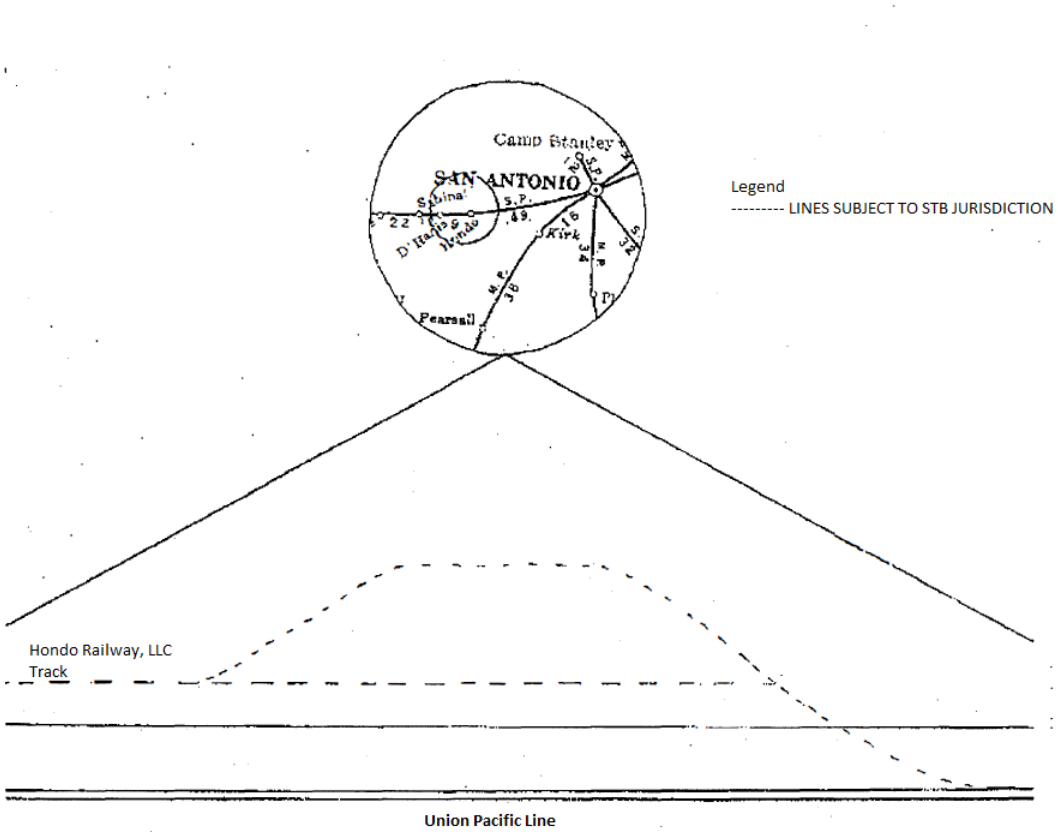
I, John H. Kim, being duly sworn, state that I am General Counsel and Assistant Secretary of Macquarie Infrastructure Partners V GP, LLC and that I am an officer duly authorized to execute, verify, and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information, and belief.

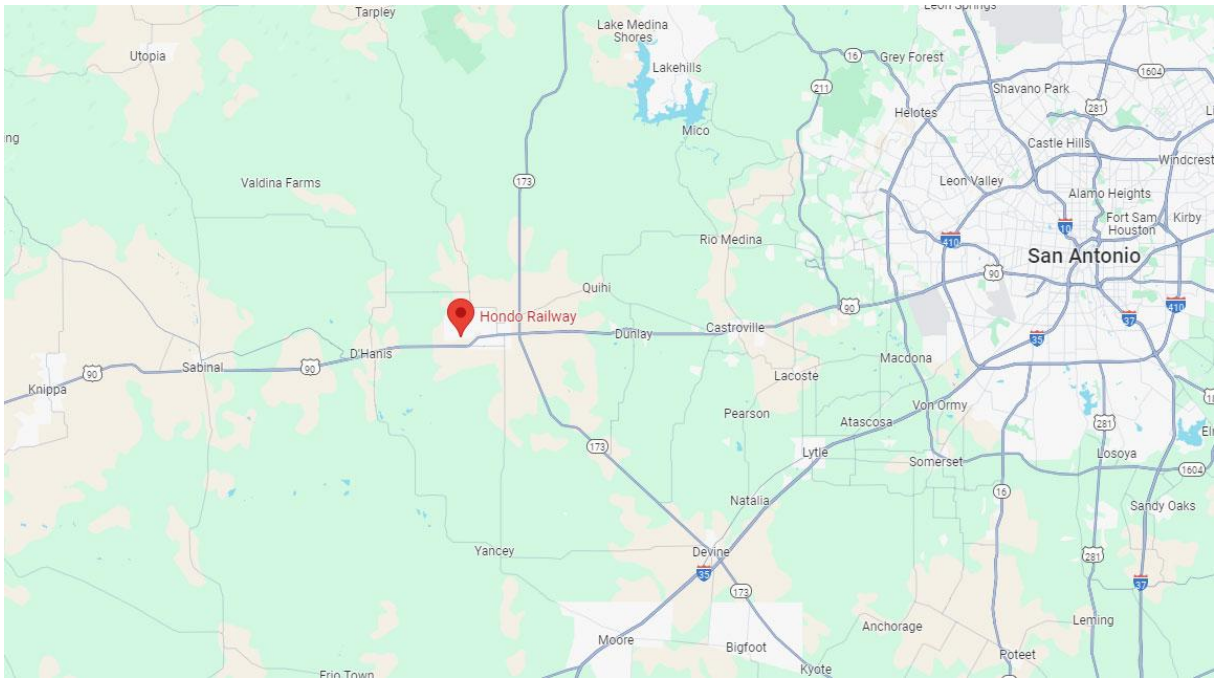


Name: John H. Kim
Title: General Counsel and Assistant Secretary

PUBLIC VERSION

EXHIBIT 1:
HRC SYSTEM MAP





PUBLIC VERSION

EXHIBIT 2:
PURCHASE AGREEMENT

MEMBERSHIP INTEREST PURCHASE AGREEMENT

dated as of

August 27, 2024

among

PINSLY RAILROAD COMPANY, LLC,

as Buyer,

and

DONALD LEE,

MARK HOLLAND,

MILES LEE,

and

DREW HOLLAND,

as Beneficial Owners and Sellers

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "**Agreement**"), dated as of August 27, 2024 is entered into by and among (a) Pinsly Railroad Company, LLC, a Delaware limited liability company ("**Buyer**"), (b) Donald Lee, an individual, and Mark Holland, an individual (together with Donald Lee, the "**Primary Sellers**"), and (c) Miles Lee, an individual, and Drew Holland, an individual (together with Miles Lee and the Primary Sellers, the "**Beneficial Owners**" or "**Sellers**" and each individually, a "**Beneficial Owner**" or "**Seller**").

RECITALS

WHEREAS, Beneficial Owners collectively own all of the issued and outstanding Membership Interests (the "**Purchased Membership Interests**") of Hondo Railway, LLC, a Texas limited liability company (the "**Company**");

WHEREAS, the Company holds certain assets related to, and is in the business of operating the railroad line located in Medina County, Texas, as depicted on Annex 1; and

WHEREAS, Beneficial Owners desire to sell to Buyer, and Buyer desires to purchase from Beneficial Owners, the Purchased Membership Interests (the "**Transaction**").

NOW, THEREFORE, in consideration of the foregoing and mutual promises and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties (as defined below) hereby agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. Definitions. As used herein, the following terms have the following meanings:

"**Access Rights**" has the meaning set forth in Section 2.04(b).

"**Accounting Arbitrator**" has the meaning set forth in Section 2.04(d).

"**Accounting Principles**" means in accordance with GAAP using and applying the same accounting principles, practices, procedures, policies and methods (with consistent classifications, judgments, elections, inclusions, exclusions and valuation and estimation methodologies) used and applied in the preparation of the Financial Statements; provided, that if such accounting principles, practices, procedures, policies and methods and GAAP are inconsistent, GAAP shall control.

"**Action**" means any audit, charge, complaint, litigation, lawsuit, investigation, arbitration or other legal proceeding, in each case before any Governmental Authority, whether civil, criminal, administrative or otherwise, in law or equity.

"**Adjustment Escrow Amount**" means an amount in cash equal to [redacted].

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors, managers, governing body, or other Persons performing a similar function of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise; provided, however, that with respect to Buyer, the term "Affiliate" shall only include Buyer and its Subsidiaries.

"**Aggregate Purchase Price**" means the sum of (a) [redacted], *plus* (b) the Closing Net Working Capital (if a positive number), *less* (c) the absolute value of the Closing Net Working Capital (if a negative number), *plus* (d) the Cash Amount.

"**Agreement**" has the meaning set forth in the introductory paragraph hereto.

"**Alternative Transaction**" means an offer, proposal or inquiry from any Person (other than Buyer or any of its Representatives acting on Buyer's behalf) regarding (a) an investment in or a sale of any of the Membership Interests of the Company, (b) any merger, reorganization, recapitalization, consolidation, or other business combination or disposition involving the Company, (c) any third party financing of the Company (whether debt or equity) or (d) any sale of all or a substantial portion of the assets of the Company.

"**Ancillary Agreements**" means the Assignment Agreement, the Escrow Agreement and all other agreements, documents, or certificates to be executed and delivered by a party in connection with this Agreement.

"**Annual Financial Statements**" has the meaning set forth in Section 4.04(a).

"**Anti-Corruption Laws**" means laws, regulations, or orders relating to anti-bribery or anti-corruption (governmental or commercial) of any jurisdiction applicable to the parties, including laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment) to any government official, commercial entity, or any other Person to obtain a business advantage; such as, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended from time to time, the UK Bribery Act of 2010, and all national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

"**Assignment Agreement**" means the Assignment Agreement to be entered into as of the Closing Date among Buyer and Beneficial Owners in the form attached hereto as Exhibit B.

"**Balance Sheet**" has the meaning set forth in Section 4.04(a).

"**Balance Sheet Date**" has the meaning set forth in Section 4.04(a).

"**Beneficial Owner**" and "**Beneficial Owners**" have the meaning set forth in the introductory paragraph hereto.

[redacted]

"**Business**" means the business engaged in by the Company as of the date of this Agreement and at any time during the 12-month period immediately prior to the date hereof.

"**Business Day**" means a day, other than a Saturday, Sunday or other day on which commercial banks in New York, New York or San Antonio, Texas are authorized or required by Law to close.

"**Buyer**" has the meaning set forth in the introductory paragraph hereto.

"**Buyer Disclosure Letter**" means the disclosure letter, dated as of the date hereof, delivered by Buyer to Sellers in connection with the execution and delivery of this Agreement.

"**Buyer Group**" shall mean Buyer, its Subsidiaries, any direct and indirect equity holder of Buyer and any of their respective Affiliates, in each case, without giving effect to the limitations set forth in the proviso in the definition of Affiliate.

"**Buyer's Knowledge**" means the actual knowledge of the individuals listed on Section 1.01(a) of the Buyer Disclosure Letter, in each case, after due inquiry.

"**Buyer Parties**" has the meaning set forth in Section 8.02(a).

"**Campaign Finance Law**" means any applicable federal, state, or local Laws related to political activity and/or campaign finance in the United States, including, but not limited to, the Federal Election Campaign Act, the regulations of the Federal Election Commission, pay-to-play Laws, and all state and local Laws related to political activity and/or campaign finance.

"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) and any administrative or other guidance published with respect thereto by any Governmental Authority, or any other applicable Law or executive order or executive memorandum intended to address the consequences of COVID-19 (in each case, including any comparable provisions of U.S. federal, state, local or non-U.S. Law and including any related or similar orders or declarations from any Governmental Authority), including the Presidential Memorandum on Deferring Payroll Tax Obligations in light of the ongoing COVID-19 Disaster,

as issued on August 8, 2020, and including any administrative or other guidance published with respect thereto by any Governmental Authority (including IRS Notice 2020-65).

"**Cash**" means, [redacted]

"**Cash Amount**" means [redacted].

"**CERCLA**" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), as amended.

"**Claims**" has the meaning set forth in Section 6.11(a).

"**Closing**" has the meaning set forth in Section 2.02.

"**Closing Date**" means the date of the Closing.

"**Closing Indebtedness**" means Indebtedness of the Company calculated as of the Measurement Time.

"**Closing Net Working Capital**" [redacted]

"**Closing Payment**" means the Estimated Aggregate Purchase Price *minus* the Adjustment Escrow Amount.

"**Closing Statement**" has the meaning set forth in Section 2.03.

"**Closing Transaction Expenses**" means Transaction Expenses calculated as of the Measurement Time.

"**COBRA**" has the meaning set forth in Section 4.15(e).

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

"**Company**" has the meaning set forth in the Recitals hereto.

"**Company Benefit Plans**" has the meaning set forth in Section 4.15(a).

"**Company ERISA Affiliate**" means any trade or business (whether or not incorporated) which together with the Company would be treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

"**Company Intellectual Property**" has the meaning set forth in Section 4.09(a).

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

"**Company Released Parties**" has the meaning set forth in Section 6.11(a).

"**Company Releasing Parties**" has the meaning set forth in Section 6.11(b).

"**Company Systems**" has the meaning set forth in Section 4.09(c).

"**Competitor**" has the meaning set forth in Section 6.10(a)(i).

"**Confidentiality Agreement**" means that certain mutual confidentiality and non-disclosure agreement, dated April 9, 2024, to which Buyer and the Company are parties.

"**Continuing Employee**" has the meaning set forth in Section 6.07(a).

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notices, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding agreements, whether written or oral.

"**COVID-19**" means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemics or disease outbreaks.

[redacted]

"**Data Room**" has the meaning set forth in Section 1.02.

"**Employees**" means all employees of the Company.

"**End Date**" has the meaning set forth in Section 9.01(d).

"**Enforceability Exceptions**" has the meaning set forth in Section 3.01(b).

"**Environmental Claim**" means any action, suit, claim, complaint, investigation or other legal proceeding, or as to each, any penalty, fine, settlement or judgement arising therefrom, by any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or

remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with or violation of any Environmental Law or term or condition of any Environmental Permit.

"**Environmental Law**" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

"**Environmental Notice**" means any written directive, notice of violation or infraction, or other written notice respecting any Environmental Claim or otherwise relating to actual or alleged Release of Hazardous Material, non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"**Environmental Permit**" means any Permit, letter, authorization, notice of intent, clearance, consent, waiver, closure, exemption, identification number, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**Escrow Agent**" means Citibank, N.A.

"**Escrow Agreement**" means the Escrow Agreement to be entered as of the Closing Date among Buyer, Sellers' Representatives, and the Escrow Agent, with respect to the Adjustment Escrow Amount in the form attached hereto as Exhibit C.

"**Estimated Aggregate Purchase Price**" has the meaning set forth in Section 2.03.

"**Excluded Taxes**" means (a) Taxes relating to the Business or the Company for any Pre-Closing Tax Period or (b) any Taxes of any Seller (including any Taxes of any Seller arising out of the transactions contemplated by this Agreement).

"**Facilities**" has the meaning set forth in Section 4.08(a).

"**FCC**" has the meaning set forth in Section 6.02(c).

"**FCC Filings**" has the meaning set forth in Section 6.02(c).

"**Final Aggregate Purchase Price**" has the meaning set forth in Section 2.04(d).

"**Final Purchase Price Adjustment Statement**" has the meaning set forth in Section 2.04(d).

"**Financial Statements**" has the meaning set forth in Section 4.04(a).

"**Fraud**" means intentional fraud by a party as defined under the Laws of Delaware with regard to the representations and warranties made by such party in this Agreement (as modified by the Seller Disclosure Letter, the Buyer Disclosure Letter, Schedules and Exhibits to this Agreement).

"**GAAP**" means generally accepted accounting principles in the United States of America.

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

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

[redacted]

"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, or product, in each case, whether naturally occurring or man-made, that is identified, defined, or classified as hazardous, acutely hazardous, reactive, flammable, radioactive, toxic, or words of similar import or regulatory effect under Environmental Laws, regardless of amount or volume; (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, per- and polyfluoroalkyl substances, urea formaldehyde foam insulation and polychlorinated biphenyls, regardless of amount or volume; and (c) any other material, substance, chemical, waste, or product, in each case whether naturally occurring or man-made, for which there exist standards of care, or for which Liability may be imposed, under Environmental Law.

"**Indebtedness**" means [redacted]

[redacted]

"**Insurance Policies**" has the meaning set forth in Section 4.10(a).

"**Intellectual Property**" means any and all: (a) trademarks and service marks, including all applications and registrations and goodwill related to the foregoing; (b) copyrights, including all applications and registrations related to the foregoing; (c) trade secrets and confidential know-how; (d) patents and patent applications; and (e) internet domain name registrations.

"**Interim Financial Statements**" has the meaning set forth in Section 4.04(a).

"**Law**" means any transnational, domestic or foreign federal, state or local law, constitution, treaty, ordinance, code, rule, regulation, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by any Governmental Authority, in each case, as amended unless expressly specified otherwise.

"**Leases**" has the meaning set forth in Section 4.07(c).

"**Liability**" means, with respect to any Person, any liability, indebtedness or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, due or to become due.

"**Lien**" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, levy, encroachment, option, transfer restriction, license, right of first refusal, right of first offer, or encumbrance or other similar restriction in respect of such property or asset.

"**Lobbying Laws**" means all applicable federal, state, and local Laws concerning lobbying (including, but not limited to, direct lobbying and grassroots lobbying), including, but not limited to, the federal Lobbying Disclosure Act, state, and local lobbying Laws, any ethics Laws related to the conduct of lobbying, and all applicable lobbying registration and reporting requirements.

[redacted]

"**Material Adverse Effect**" means any fact, circumstance, change, event, occurrence or effect that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (x) the financial condition, business, assets, liabilities or results of operations of the Company, taken as a whole, or (y) the ability of the Sellers and their respective Affiliates to timely consummate the transaction contemplated hereby (or would reasonably be

expected to prevent, hinder or delay, the transaction contemplated hereby); provided, however, that, with respect to foregoing clause (x), none of the following, and no fact, circumstance, change, event, occurrence or effect arising out of, relating to or resulting from the following, shall constitute a "Material Adverse Effect": (a) any facts, circumstances, changes, events, occurrences or effects generally affecting (i) the industries in the same geographic area in which the Company operates, or (ii) the economy, credit, debt, securities or financial or capital markets in the United States or elsewhere in the world, including changes in interest, exchange rates or commodity prices, or deterioration in the credit markets generally; or (b) any facts, circumstances, changes, events, occurrences or effects to the extent arising out of, resulting from or attributable to (i) changes or prospective changes in Law, in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, (ii) acts of war (whether or not declared and whether or not political in nature) or any outbreak of hostilities, sabotage or terrorism (including cyber-attacks, computer hacking, international trade related matters and matters related to tariffs), or any escalation or worsening of any such acts of war (whether or not declared and whether or not political in nature), outbreak of hostilities, sabotage or terrorism (including cyber-attacks, computer hacking, international trade related matters and matters related to tariffs), (iii) earthquakes, hurricanes, tornados, natural disasters, climatic conditions or other acts of god, (iv) actions or omissions of the Company or any Seller requested by Buyer in writing or required by this Agreement or (v) any failure by the Company to meet any internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations (it being understood that the underlying cause(s) of any such failure may be taken into consideration unless otherwise prohibited by this definition of "Material Adverse Effect"); except, in the case of clauses (a), (b)(i), (b)(ii) and (b)(iii), to the extent such fact, circumstance, change, event, occurrence or effect disproportionately affects the Company compared to other companies in the industry in which the Company operates.

"**Material Contracts**" has the meaning set forth in Section 4.06(a).

"**Material Customer**" has the meaning set forth in Section 4.20(a).

"**Material Vendor**" has the meaning set forth in Section 4.20(b).

"**Measurement Time**" means 12:01 a.m. on the Closing Date.

"**Membership Interests**" means issued and outstanding limited liability company interests or other indicia of equity ownership (including any profits interests or phantom stock).

"**Non-Party Affiliates**" has the meaning set forth in Section 10.13.

"**Objection Dispute**" has the meaning set forth in Section 2.04(c).

[redacted]

[redacted]

"**Ordinary Course**" with respect to an action taken by a Person, that such action is taken in the ordinary course of the normal operations of the Person consistent with the past custom and practices of such Person, subject to such deviations therefrom as are, or have been, reasonably necessary to comply with applicable Law.

"**Organizational Documents**" means (a) in the case of a corporation, its certificate of incorporation (or analogous document) and bylaws (or analogous document); (b) in the case of a limited liability company, its certificate of formation (or analogous document) and limited liability company operating agreement; or (c) in the case of a Person other than a corporation or limited liability company, the documents by which such Person (other than an individual) establishes its legal existence or which govern its internal affairs (in each case of clauses (a), (b) and (c), as amended through the date of this Agreement).

"**Parties**" means, collectively, Buyer and each Beneficial Owner.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, and consents required to be obtained from Governmental Authorities.

"**Permitted Liens**" means (a) Liens securing obligations under capital leases but only to the extent secured by the assets leased pursuant to such capital leases, (b) Liens for Taxes, assessments or governmental charges or levies that are not yet due and payable, (c) mechanics', materialmen's, workmen's, repairmen's, warehousemen's, carrier's and other similar statutory Liens arising or incurred in the Ordinary Course which are not yet due and payable, (d) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property, none of which materially and adversely affect the Business or the railroad operations of the Company as historically conducted; (e) other than with respect to owned Real Property, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course consistent with past practice which are not, individually or in the aggregate, material to the Business of the Company; (f) Liens in respect of pledges or deposits under workers' compensation Laws or similar legislation, unemployment insurance or other types of social security; (g) municipal bylaws, development agreements, restrictions or regulations, and zoning, entitlement, land use, building or planning restrictions or regulations, in each case, promulgated by any Governmental Authority that do not (in each case) materially detract from the value of or materially interfere with the use and operation of any of the assets of the Company; (h) in the case of leased Real Property, any Liens to which the underlying fee or any other interest in the underlying leased premises or lands is subject, including rights of the landlord under the lease or lands and all superior, underlying and ground leases and renewals, extensions, amendments or substitutions thereof; (i) all matters of record, including any covenant, easement, servitude, permit, surface lease, condition, restriction, and other rights included in or burdening the assets of the Company for the purpose of surface or subsurface operations, roads, alleys, highways, railways, pipelines, transmission lines, transportation lines, distribution lines, power lines, telephone lines, removal of timber, grazing, logging operations, canals, ditches, reservoirs,

and other like purposes, or for the joint or common use of real estate, rights of way, facilities, and equipment that do not (in each case) materially detract from the value of or materially interfere with the use and operation of any of the assets of the Company; and (j) licenses of Intellectual Property in the Ordinary Course.

"**Person**" means any individual, person, entity, general partnership, limited partnership, limited liability partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization, including a Governmental Authority.

"**Pre-Closing Tax Period**" means any Tax period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"**Pre-Closing Taxes**" means (a) any and all Taxes of or with respect to the Company for or relating to any Pre-Closing Tax Period, including any Liabilities for amounts that the Company has deferred pursuant to the CARES Act and (b) any and all asset-level Taxes, including registration fees, real property Taxes, personal property Taxes and similar ad valorem Taxes and obligations, levied upon or with respect to the Business for or relating to any Pre-Closing Tax Period.

"**Purchase Price Adjustment Statement**" has the meaning set forth in Section 2.04(a).

"**Purchase Price Allocation**" has the meaning set forth in Section 6.06(c).

"**Purchased Membership Interests**" has the meaning set forth in the Recitals hereto.

"**Railroad Assets**" has the meaning set forth in Section 4.08(b).

"**Real Property**" means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon, other than the Facilities.

"**Related Party**" means any Seller, any Affiliate of any Seller, any officer, director, manager, equity holder or employee of the Company, or any of the foregoing Persons' immediate family members, Affiliates or associates.

"**Related Party Agreement**" has the meaning set forth in Section 4.19.

"**Release**" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"**Releasing Parties**" has the meaning set forth in Section 6.11(b).

"**Representative**" means, with respect to any Person, such Person's directors, managers, officers, direct or indirect equity holders, members, partners, existing and prospective investors,

employees, counsel, financial advisors, auditors, insurers, lenders, agents and other authorized representatives.

"**Resolution Period**" has the meaning set forth in Section 2.04(d).

"**Restricted Area**" has the meaning set forth in Section 6.10(a)(i).

"**Restricted Cash**" means [redacted]

"**Restricted Period**" has the meaning set forth in Section 6.10(a).

"**Sanctioned Country**" means any country against which the United States maintains comprehensive economic Sanctions or an embargo, which as of the date of this Agreement include the Crimea and so-called Donetsk People's Republic and Luhansk People's Republic regions of Ukraine, Cuba, Iran, North Korea, and Syria.

"**Sanctioned Person**" means (a) a Person listed on a prohibited or restricted party list published by the United States government, including the U.S. Office of Foreign Assets Control "Specially Designated Nationals and Blocked Persons List" and "Consolidated Sanctions List," or similar U.S. lists, or any such list maintained by the United Nations, the United Kingdom, the European Union or its Member States, or other applicable local authority; (b) the government, including any political subdivision, agency, or instrumentality thereof, of any Sanctioned Country or Venezuela; (c) an ordinary resident of, or entity registered in or established under the jurisdiction of, a Sanctioned Country; or (d) a party acting or purporting to act, directly or indirectly, on behalf of, or a party owned or controlled by, any of the parties listed in (a)-(c).

"**Sanctions**" means any applicable economic or financial sanctions or trade embargoes administered or enforced by (a) the United States government, including the list of Specially Designated Nationals of the U.S. Department of the Treasury's Office of Foreign Assets Control, (b) the United Nations Security Council, (c) the European Union, (d) Her Majesty's Treasury, or (e) any other relevant sanctions authority.

"**Seller**" means each Beneficial Owner.

"**Seller Disclosure Letter**" means the disclosure letter, dated as of the date hereof, delivered by Sellers to Buyer with respect to Sellers in connection with the execution and delivery of this Agreement.

"**Seller Fundamental Representations**" means the representations and warranties of Sellers set forth in: Section 3.01, Section 3.02, Section 3.03, Section 3.04, and Section 3.06, Section 4.01(a), Section 4.02 and Section 4.18.

"**Seller Parties**" has the meaning set forth in Section 8.02(b).

"**Seller Released Parties**" has the meaning set forth in Section 6.11(b).

"**Seller Releasing Parties**" has the meaning set forth in Section 6.11(a).

"**Sellers' Knowledge**" means the actual knowledge of the individuals listed on Section 1.01(c) of the Seller Disclosure Letter, in each case, after due inquiry.

"**Sellers' Representative**" has the meaning set forth in Section 6.12.

"**STB**" means the United States Surface Transportation Board.

"**STB Approval**" means any required approval, authorization or exemption of the transactions contemplated by this Agreement for the Company to obtain ownership of 13,200 feet of track currently leased and for Buyer to obtain control of the Company pursuant to 49 U.S.C. § 11323 et seq. and 49 U.S.C. § 10902 et seq. and the STB's regulations at 49 C.F.R. § 1150 and 49 C.F.R § 1180.

"**Straddle Period**" means any taxable period that includes (but does not end on) the Closing Date.

"**Subsidiary**" means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions (or, in the case of a partnership, a majority of the general partnership interests) is directly or indirectly owned or controlled by such Person or by one or more of its Subsidiaries.

"**Tax**" means any tax of any kind, including any federal, state, local or non-U.S. income, profits, license, severance, occupation, windfall profits, capital gains, capital stock, transfer, registration, social security, railroad retirement and railroad unemployment, production, franchise, gross receipts, payroll, sales, employment, use, property, excise, value added, escheat, estimated, stamp, alternative or add-on minimum, environmental or withholding tax, together with all interest and penalties imposed with respect to such amounts or with respect to an obligation to file Tax Returns.

"**Tax Return**" means any Tax return, statement, report, declaration, schedule or form filed or required to be filed with any Taxing Authority, including any amendment thereof.

"**Taxing Authority**" means any Governmental Authority responsible for the imposition or collection of any Tax.

"**Transaction**" has the meaning set forth in the Recitals.

"**Transaction Expenses**" means (a) all out-of-pocket fees and expenses incurred or otherwise payable or reimbursable by the Company in connection with the transactions contemplated hereby or in connection with any alternative transactions or sale process considered by the Sellers or the Company, including those payable to investment bankers, legal counsel, accountants and other advisors and (b) all retention, change of control, transaction-related or similar payments or bonuses (but, for the avoidance of doubt, not regular, annual performance bonuses) payable to Employees or any other current or former service provider arising out of or relating to the consummation of the transactions contemplated hereby (and including, for the

avoidance of doubt, all installment payments of the foregoing, the employer portion of any payroll or employment Taxes associated with such payments and any matching, employer non-elective or other company contributions payable to the Company Benefit Plan intended to provide retirement benefits associated with such payments). Transaction Expenses shall not include (w) any Transaction Expenses paid prior to the Measurement Time (but, for the avoidance of doubt, shall include Transaction Expenses paid at Closing), (x) any liabilities included in Closing Net Working Capital or (y) any Indebtedness.

"**Transfer Taxes**" has the meaning set forth in Section 6.06(a).

Section 1.02. Other Definitional and Interpretative Provisions. The words "hereof", "herein" and "hereunder" and words of similar import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. The headings in this Agreement are for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein, including the Seller Disclosure Letter and the Buyer Disclosure Letter, are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any term used in this Agreement or any Exhibit or Schedule hereto, but not otherwise defined or specified herein, shall have the meaning attributed to such term in the railroad industry as of 2024. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. The word "or" shall be deemed to mean "and/or" (whether or not specified), and the words "will" and "will not" are expressions of command and not merely expressions of future intent or expectation. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References in the singular or to "him," "her," "it," "itself," or other like references, and references in the plural or the feminine or masculine reference, as the case may be, shall also, when the context so requires, be deemed to include the plural or singular, or the masculine or feminine reference, as the case may be. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to any time shall mean Central Time unless otherwise specified. Any action required to be taken "within" (or any other word or phrase of similar import) a specified time period following the occurrence of an event shall be required to be taken by no later than 11:59 P.M. on the last day of such time period, which shall be calculated starting with the day immediately following the date of the event. All monetary figures shall be in United States dollars unless otherwise specified. When calculating the period of time before which, within which or following which any act is to be done or step is to be taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If any period expires on a day which is not a Business

Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day. Whenever the phrase "made available," "delivered" or words of similar import are used in reference to a document, it shall mean the document was delivered to Buyer or its Representatives prior to [redacted], or was otherwise made available for viewing by Buyer or its Representatives in the "[redacted] (the "**Data Room**"), as that site existed as of [redacted]. The parties have participated jointly in the negotiation and drafting of this Agreement, and each has been represented by counsel of its choosing and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2
PURCHASE AND SALE

Section 2.01. Purchase and Sale of Membership Interests. Upon the terms and subject to the conditions of this Agreement, at the Closing, each Beneficial Owner agrees to sell, transfer and assign to Buyer, and Buyer agrees to purchase from such Beneficial Owner, free and clear of all Liens, the Purchased Membership Interests owned by such Beneficial Owner.

Section 2.02. Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place remotely via the electronic exchange of documents and signature pages on the date that is the [redacted] following the day on which the last of the conditions to the obligations of the Parties set forth in Article 7 or otherwise in this Agreement (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) shall have been satisfied or waived in writing by the Party or Parties entitled to the benefit of the same in accordance with this Agreement, or at such other date, time and place as Buyer and Sellers shall otherwise mutually agree. From and after the Measurement Time until the actual consummation of the Closing, the Sellers shall not permit the Company to (i) repay any Indebtedness or (ii) pay any Transaction Expenses. At the Closing:

(a) Buyer shall deliver, or cause to be delivered:

(i) to Sellers' Representatives, an amount equal to the Closing Payment in immediately available funds by wire transfer to the account(s) designated by Sellers in accordance with Section 2.03;

(ii) to the Escrow Agent, the Adjustment Escrow Amount by wire transfer of immediately available funds in accordance with the Escrow Agreement;

(iii) the Assignment Agreement, duly executed by Buyer;

(iv) the Escrow Agreement, duly executed by Buyer and the Escrow Agent; and

(v) the certificate required pursuant to Section 7.03(c), duly executed by Buyer.

(b) Sellers shall deliver, or cause to be delivered, to Buyer:

(i) the Assignment Agreement, duly executed by each Beneficial Owner and attaching thereto certificates for the Purchased Membership Interests (if any);

(ii) the Escrow Agreement, duly executed by Sellers' Representatives;

(iii) the certificate required pursuant to Section 7.02(d), duly executed by each Seller;

(iv) a duly executed letter of resignation or other evidence of removal from office, effective as of the Closing, of all directors or officers of the Company, if any; and

(v) a properly executed IRS Form W-9 from each Beneficial Owner.

Section 2.03. Estimated Purchase Price Adjustment. Within [redacted] following the date hereof, Sellers' Representatives shall provide Buyer with a letter executed by Sellers' Representatives that provides the wire instructions for the accounts that Sellers' Representatives will designate for payment of the Closing Payment pursuant to Section 2.02(a)(i), including the percentages to be paid to each account, and shall designate a responsible individual of Sellers' Representatives with familiarity with such accounts and provide such individual's contact information, including phone number to the extent available at such time. No earlier than [redacted] prior to the Closing Date, Sellers' Representatives shall deliver to Buyer a statement (the "**Closing Statement**") setting forth (a) Sellers' Representatives' good faith estimates of (i) Closing Net Working Capital and (ii) the Cash Amount, in each case, calculated in accordance with the applicable definitions thereof and (b) using the amounts set forth in clause (a), Sellers' Representatives' estimated calculation of the resulting Aggregate Purchase Price (the "**Estimated Aggregate Purchase Price**"). Sellers' Representatives shall consider in good faith any comments from Buyer with respect to the Closing Statement delivered no later than one Business Day prior to the Closing Date.

Section 2.04. Post-Closing Purchase Price Adjustment.

(a) As promptly as practicable, but no later than [redacted] after the Closing Date, Buyer will cause to be prepared and delivered to Sellers' Representatives a statement (the "**Purchase Price Adjustment Statement**") setting forth (i) Buyer's good faith calculations of (A) Closing Net Working Capital and (B) the Cash Amount, together with such schedules and data with respect to the determination thereof as may be reasonably appropriate to support the calculations set forth in the Purchase Price Adjustment Statement, and (ii) using the amounts set forth in the preceding clause (i), Buyer's calculation of the Aggregate Purchase Price.

(b) Following the delivery of the Purchase Price Adjustment Statement, Buyer shall provide Sellers' Representatives and their Representatives with reasonable access to the books and records, work papers and other documents that were used in the preparation of, or otherwise relate to, the Purchase Price Adjustment Statement (collectively, "**Access Rights**") to verify the accuracy

of such amounts, all to the extent reasonably requested by Sellers' Representatives. The Accounting Arbitrator shall have the power to resolve any disputes regarding Access Rights.

(c) If Sellers' Representatives disagree with the calculation of any of the items set forth in the Purchase Price Adjustment Statement, Sellers' Representatives shall notify Buyer in writing of such disagreement (an "**Objection Dispute**") within [redacted] after receipt of the Purchase Price Adjustment Statement by Sellers' Representatives. Any Objection Dispute shall specify in reasonable detail the nature of any disagreement so asserted. If Sellers' Representatives fail to deliver written notice of an Objection Dispute to Buyer within such [redacted] period after delivery of the Purchase Price Adjustment Statement to Sellers' Representatives, the Purchase Price Adjustment Statement shall be deemed final and binding upon all Parties to this Agreement.

(d) If Sellers' Representatives timely deliver a notice of an Objection Dispute pursuant to Section 2.04(c), Buyer and Sellers' Representatives shall negotiate in good faith to resolve any Objection Dispute and any resolution agreed to in writing by Buyer and Sellers' Representatives shall be final and binding upon the Parties. If Buyer and Sellers' Representatives are unable to resolve all Objection Disputes within [redacted] after delivery of written notice of such Objection Disputes by Sellers' Representatives to Buyer (the "**Resolution Period**"), then the disputed matters shall, at the request of either Sellers' Representatives or Buyer, be referred for final determination to nationally recognized independent accounting firm mutually agreed by the Buyer and the Sellers' Representatives (the "**Accounting Arbitrator**") within [redacted] following the conclusion of the Resolution Period; provided, however, that any communications between Sellers' Representatives and Buyer (or their respective Representatives) regarding the Objection Dispute during the Resolution Period shall be considered settlement discussions pursuant to the Federal Rule of Evidence 408 and similar state rules and shall not be submitted to, or considered by, the Accounting Arbitrator. If such firm is unable to serve as an arbitrator for the purposes contemplated by this Agreement, within [redacted] after receiving notice of the same, Buyer and Sellers' Representatives shall jointly select an Accounting Arbitrator from an accounting firm of national standing. If Buyer and Sellers' Representatives are unable to agree upon an Accounting Arbitrator within such time period, then the Accounting Arbitrator shall be an accounting firm of national standing designated by the American Arbitration Association in Houston, Texas; provided that the Accounting Arbitrator shall not have provided any audit, consulting, or other services to Buyer, any Seller, or any of their respective Affiliates in the preceding [redacted] The Accounting Arbitrator shall only consider those items and amounts set forth on the Purchase Price Adjustment Statement as to which Buyer and Sellers have disagreed within the time periods and amounts and on the terms specified in Section 2.04(c) and this Section 2.04(d), including the Accounting Principles, and must resolve all unresolved Objection Disputes in accordance with the terms and provisions of this Agreement and the written presentations of Buyer and Sellers' Representatives (and not based on any independent review). The Accounting Arbitrator shall deliver to Buyer and Sellers' Representatives, as promptly as practicable and in any event within [redacted] after its appointment, a reasoned written report setting forth the resolution of any unresolved Objection Disputes determined in accordance with the terms herein. In resolving any disputed item, the Accounting Arbitrator shall be bound by the principles set forth in this Section 2.04 and shall not assign a value to any item greater than the greatest value for such item claimed by either Buyer in the Purchase Price Adjustment Statement or Sellers' Representatives in the Objection Dispute or less than the lowest value for such item claimed by either Buyer in the Purchase Price Adjustment Statement or Sellers' Representatives in the

Objection Dispute, as applicable. Such report shall be final and binding upon all Parties, absent arithmetic error by the Accounting Arbitrator or actual fraud. Upon the agreement of Buyer and Sellers' Representatives, or upon the decision of the Accounting Arbitrator, or if Sellers' Representatives fail to deliver written notice of disagreement to Buyer within the [redacted] period provided in Section 2.04(c), the Purchase Price Adjustment Statement, as adjusted (if necessary) pursuant to the terms of this Agreement, shall be deemed to be the final Purchase Price Adjustment Statement for purposes of this Section 2.04 (the "**Final Purchase Price Adjustment Statement**") and shall be deemed to be final and binding upon all Parties. The Aggregate Purchase Price shown on the Final Purchase Price Adjustment Statement shall be referred to as the "**Final Aggregate Purchase Price**". The fees, expenses and costs of the Accounting Arbitrator shall be borne by Buyer, on the one hand, and Sellers, on the other hand, in the proportion that the aggregate dollar amount of the disputed items submitted to the Accounting Arbitrator by such Party (or Parties, as applicable) that are unsuccessfully disputed by such Party (or Parties, as applicable), as finally determined by the Accounting Arbitrator, bears to the aggregate dollar amount of disputed items submitted by Buyer and Sellers' Representatives; provided that Buyer, on the one hand, and Sellers, on the other hand, shall initially each be responsible for 50% of any retainer or other upfront fees and costs of the Accounting Arbitrator, subject to re-allocation pursuant to the preceding clause. The Parties agree that the Accounting Arbitrator's decision may be enforced as an arbitration award in any court of competent jurisdiction. The process set forth in this Section 2.04 shall be the exclusive remedy of the Parties for any disputes related to any amounts set forth on the Purchase Price Adjustment Statement.

Section 2.05. Purchase Price Adjustment.

(a) If the Estimated Aggregate Purchase Price is equal to the Final Aggregate Purchase Price, then Buyer and Sellers' Representatives shall direct the Escrow Agent to pay Sellers from the Adjustment Escrow Amount an amount equal to the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account or accounts designated by Sellers' Representatives in writing.

(b) If the Estimated Aggregate Purchase Price is greater than the Final Aggregate Purchase Price, then (i) Buyer and Sellers' Representatives shall direct the Escrow Agent to pay Buyer from the Adjustment Escrow Amount an amount equal to the lesser of (A) the excess of the Estimated Aggregate Purchase Price over the Final Aggregate Purchase Price and (B) the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account designated by Buyer in writing and (ii) if any amount of the Adjustment Escrow Amount remains in escrow following the application of the preceding clause (i), Buyer and Sellers' Representatives shall direct the Escrow Agent to pay such amount to Sellers.

(c) If the Final Aggregate Purchase Price is greater than the Estimated Aggregate Purchase Price, then (i) Buyer and Sellers' Representatives shall direct the Escrow Agent to pay Sellers from the Adjustment Escrow Amount an amount equal to the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account designated by Sellers' Representatives in writing and (ii) Buyer shall pay, or cause to be paid, to Sellers an amount equal to the lesser of (A) an amount equal to the excess of the Final Aggregate Purchase Price over the Estimated Aggregate Purchase Price and (B) an amount equal to the Adjustment Escrow Amount,

in each case, by wire transfer of immediately available funds to the account designated by Sellers' Representatives in writing.

(d) Notwithstanding anything to the contrary contained herein, the process and adjustment set forth in Section 2.04 and this Section 2.05 shall be the sole and exclusive remedy of the Parties with respect to items required hereunder to be included or reflected in the calculation of the Final Aggregate Purchase Price.

(e) Any payment pursuant to this Section 2.05 shall be made within [redacted] after the Final Aggregate Purchase Price has been determined, by wire transfer of immediately available funds and delivered to such bank account as shall be designated in writing by the receiving party thereof. Sellers, Buyer, the Company, and their respective Affiliates shall treat any payment pursuant to this Section 2.05 as an adjustment to the purchase price for Tax purposes.

Section 2.06. Withholding. Notwithstanding any provision contained herein to the contrary, Buyer and its Affiliates and agents shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of applicable Law. If Buyer or its Affiliates or agents, as the case may be, so withholds amounts, such amounts shall be (a) deposited with the applicable Governmental Authority as required under any provision of applicable Law and (b) treated for all purposes of this Agreement as having been paid to such Person in respect of which Buyer or its Affiliates or agents, as the case may be, made such deduction and withholding.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller represents and warrants to Buyer, severally and not jointly, as to itself or himself only, as applicable, as of the date hereof and as of the Closing Date that:

Section 3.01. Authority; Capacity.

(a) The execution, delivery and performance by each Beneficial Owner of this Agreement and the Ancillary Agreements to which such Beneficial Owner is a party, and the consummation of the transactions contemplated hereby and thereby, are within such Beneficial Owner's legal right, power, authority and capacity.

(b) This Agreement has been, and each Ancillary Agreement to which each Seller is a party will be, duly and validly executed and delivered by such Seller, and, assuming the due and valid execution by the other parties hereto and thereto, this Agreement and each Ancillary Agreement to which such Seller is a party constitutes a valid and binding agreement of such Seller, enforceable against such Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity (collectively, the "**Enforceability Exceptions**").

(c) Neither the execution and delivery by such Seller of this Agreement and the Ancillary Agreements to which such Seller is a party nor the consummation by such Seller of the transactions

contemplated hereby and thereby, will violate, constitute a default under, result in the creation of any Lien upon the Purchased Membership Interests or give any Person the right to modify, terminate, or accelerate any obligation under any provision of the Organizational Documents of the Company.

Section 3.02. Consents and Approvals. No consent, approval, clearance, waiver, Permit or Governmental Order of or from, or filings or registrations with, or notice to, any Governmental Authority or with any third Person are necessary in connection with the execution and delivery by such Seller of this Agreement and the Ancillary Agreements to which such Seller is a party or the consummation by such Seller of the transactions contemplated hereby and thereby, [redacted] and (c) as otherwise set forth in Section 3.02 of the Seller Disclosure Letter, except where the failure to obtain such consent, approval, clearance, waiver, Permit or Governmental Order would not reasonably be expected to result in a Material Adverse Effect.

Section 3.03. Noncontravention. Neither the execution and delivery by such Seller of this Agreement and the Ancillary Agreements to which such Seller is a party nor the consummation by such Seller of the transactions contemplated hereby or thereby, will, assuming that the consents, approvals and filings referred to in Section 3.02 are duly obtained or made, (i) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to such Seller or any of its properties or assets, or (ii) violate, conflict with, result in a breach of any provision of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of such Seller under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which such Seller is a party, or by which it or any of its properties or assets may be bound or affected, except where the failure of such consents, approvals or filings to be obtained or made would not reasonably be expected to result in a Material Adverse Effect.

Section 3.04.Ownership of Purchased Membership Interests. Beneficial Owners collectively have good and valid title to the Purchased Membership Interests, free and clear of any Liens, and will transfer and deliver to Buyer at the Closing valid title to such Purchased Membership Interests free and clear of any Liens, other than restrictions on transfer that may be imposed by generally applicable securities Laws. The Purchased Membership Interests constitute 100% of the issued and outstanding Membership Interests of the Company.

Section 3.05. Litigation. There are no Actions pending or, to Sellers' Knowledge, threatened against or by a Seller or any of its Affiliates that challenge or seek to prevent, enjoin or otherwise delay the Transaction.

Section 3.06. Brokers. No Seller has, and none of its representatives has, employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated hereby.

Section 3.07.Anti-Corruption; Sanctions.

(a) For the past [redacted], no Seller nor their respective employees, nor, to the Sellers' Knowledge, agents, or other Representative of the foregoing, has offered, promised, provided, or authorized the provision of any money, property, or other thing of value, directly or indirectly, to any Person to improperly influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of their employer, or otherwise violated any Anti-Corruption Laws.

(b) No Seller has (i) made any voluntary, directed, or involuntary disclosure to any Governmental Authority or similar agency with respect to any alleged act or omission arising under or relating to any non-compliance with any Anti-Corruption Laws; (ii) been the subject of any inquiry or enforcement proceedings for violations of Anti-Corruption Laws; or (iii) violated or received in writing any notice, request, penalty, or citation for any actual or potential non-compliance with Anti-Corruption Laws.

(c) Each Seller and, to the Sellers' Knowledge, their respective employees, agents, or any other Persons authorized to act, or acting, on behalf of the foregoing, are, and for the past [redacted] have been, in compliance with applicable Sanctions. No Seller, nor to the Sellers' Knowledge, employees, agents, or any other Persons authorized to act, or acting, on behalf of such Seller, (i) is a Sanctioned Person, (ii) has, [redacted], directly or indirectly, engaged in any dealings with or involving any Sanctioned Person or Sanctioned Country. No Seller has received any allegation, inquiry, notice or communication that alleges that the such Seller, or any employee, agent, representative, or other Person acting for or on behalf or at the direction thereof may have violated any Sanctions, and, to Sellers' Knowledge, the Sellers are not aware of any such circumstances presently in existence likely to give rise to any such allegation, inquiry, notice or communication.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

Sellers, severally and not jointly, represent and warrant to Buyer as of the date hereof and as of the Closing Date that:

Section 4.01. Corporate Existence and Power.

(a) The Company is a limited liability company duly organized, validly existing, and in good standing under the Laws of its jurisdiction of organization and has the requisite limited liability company power and authority to own, lease, and operate its assets and to carry on its Business as now conducted. The Company is duly qualified or licensed to do business as a limited liability company and is in good standing in each jurisdiction where the character of the assets and properties owned, leased, or operated by it or the nature of its Business makes such qualification or license necessary, except where the failure to be so qualified or licensed or to be in good standing, would not reasonably be expected to have a Material Adverse Effect.

(b) Section 4.01(b) of the Seller Disclosure Letter sets forth the name and jurisdiction of organization for the Company. The Company has not agreed, is not obligated to make and is not bound by any agreement or contract to make any future investment in or capital contribution to any other Person. Section 4.01(b) of the Seller Disclosure Letter identifies the officers, directors,

and managers, as applicable, of the Company. Since [redacted], the Company has not operated under any other legal name or used any fictitious or trade name.

(c) True and complete copies of the Company's Organizational Documents have been made available to Buyer as of the date hereof. Each such Organizational Document is in full force and effect. The Company is not in violation of any of the provisions of its Organizational Documents.

(d) The minute books of the Company, which have been made available to Buyer, contain true, complete and correct records of all meetings and other material corporate actions held or taken since [redacted] through the date hereof, by the respective shareholders, members, or other equity holders of the Company.

Section 4.02. Capitalization.

(a) Section 4.02 of the Seller Disclosure Letter lists the number of authorized and outstanding Membership Interests of the Company and the record and beneficial owners of such Membership Interests. All of such Membership Interests are duly authorized and validly issued, fully paid, nonassessable (as applicable) and free of preemptive or similar rights, and were issued in compliance with all applicable securities Laws. Except as set forth on Section 4.02 of the Seller Disclosure Letter, the Company has no, and is not bound by, any outstanding subscriptions, options, warrants, convertible or exchangeable securities, subscriptions, calls, commitments, contingent interests, equity appreciation rights, phantom stock, profits participation or agreements of any character calling for the purchase, repurchase, sale, redemption, transfer, conversion, or issuance of any of the Membership Interests of the Company or any securities or other interests representing the right to purchase or otherwise receive any Membership Interests of the Company. There are no voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any interests in the Company.

(b) There are no outstanding or authorized options, warrants, convertible or exchangeable securities, subscriptions, calls, scrip, rights to subscribe to, purchase rights, conversion rights, exchange rights, equity appreciation rights, phantom stock, profits participation, preemptive rights or other rights, agreements, arrangements or commitments of any character of the Company (i) calling for the purchase, sale, repurchase, redemption or issuance of any Membership Interests or any other securities of the Company or any securities representing the right to purchase or otherwise receive any Membership Interests or (ii) providing a counterparty with redemption, transfer or contingent interest or a guaranteed return. There are no voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any Membership Interests of the Company.

(c) The Company does not have any Subsidiaries or own, beneficially or of record, any equity interests of any Person.

Section 4.03. Noncontravention. The execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements to which such Seller is a party and the consummation of the transactions contemplated hereby and thereby by such Seller do not and will not, assuming that the consents, approvals and filings referred to in Section 3.02 are duly obtained

or made, and except as set forth in Section 4.03 of the Seller Disclosure Letter, (a) violate any Law applicable to the Company or any Seller, (b) require any consent of any Person under, conflict with or constitute a breach or default under (whether with or without the passage of time, the giving of notice or both), or give rise to any right of termination, cancellation or loss of any right or benefit, or acceleration of any obligation of the Company under any provision of any Material Contract or (c) result in the creation or imposition of any Lien on any asset of the Company, except for any Permitted Liens.

Section 4.04. Financial Statements.

(a) Sellers have delivered to Buyer copies of (i) the unaudited individual balance sheets of the Company as of [redacted], together with the unaudited individual statements of operations of the Company [redacted] (the "**Annual Financial Statements**"), and (ii) the unaudited individual balance sheets of the Company as of [redacted] (the "**Balance Sheet Date**" and such balance sheets, the "**Balance Sheets**"), together with the related unaudited individual statements of operations of the Company for the [redacted] (the "**Interim Financial Statements**" and together with the Annual Financial Statements, the "**Financial Statements**"). The Financial Statements, together with the notes thereto, (i) have been prepared in accordance with GAAP (except (x) that the Financial Statements do not contain all notes required by GAAP, (y) the Financial Statements are on a modified cash basis of accounting and do not include accruals for revenue earned but not billed, salaries/wages, bonuses, and accounts payable and (z) the Interim Financial Statements are subject to normal year-end adjustments) applied on a consistent basis throughout the periods covered thereby, (ii) have been prepared from, and are in accordance with, the books and records of the Company which, in each case, are correct and complete in all material respects and (iii) fairly present, in all material respects, the individual financial position of the Company at the dates thereof and the individual results of income of the Company for the respective periods indicated.

(b) Except as set forth in Section 4.04(b) of the Seller Disclosure Letter, the Company has no Liabilities, obligations or commitments of any nature, whether or not required to be disclosed in a balance sheet prepared in accordance with GAAP, except (i) liabilities which are adequately and properly reflected or reserved against in the Balance Sheet, (ii) unpaid Transaction Expenses, and (iii) liabilities incurred in the Ordinary Course since [redacted] (none of which is a Liability resulting from breach of Contract, breach of warranty, tort, infringement, misappropriation, lawsuit or violation of Law and none of which is material, either individually or in the aggregate).

(c) All of the Company's accounts receivable resulted from bona fide transactions in the ordinary course of business with unrelated third parties, and, to Sellers' Knowledge, no reason exists for such accounts receivable, net of any reserves established in accordance with GAAP consistently applied, to be uncollectible in the Ordinary Course, except as set forth in Balance Sheet.

Section 4.05. Absence of Certain Changes.

(a) Since the Balance Sheet Date, there has not been any fact, circumstance, change, event, occurrence or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) From the Balance Sheet Date until the date hereof, the Business of the Company has been conducted in the Ordinary Course, and neither the Company nor any Seller has taken any action that, if taken during the period from the date of this Agreement through the Closing Date without Buyer's consent, would have constituted a breach of Section 6.01.

Section 4.06. Material Contracts.

(a) Section 4.06(a) of the Seller Disclosure Letter lists each of the following contracts and other agreements of the Company (together with all Leases listed in Section 4.07(b) of the Seller Disclosure Letter, collectively, the "**Material Contracts**"):

(i) Contracts for the purchase, sale or leasing of real property;

(ii) any Contract with any Material Customer;

(iii) any Contract with any Material Vendor;

(iv) each Contract not contemplated in the foregoing clauses (ii) and (iii) involving aggregate annual consideration in excess of [redacted] and ongoing obligations beyond [redacted], and which, cannot be cancelled without penalty or with less than [redacted];

(v) Contracts containing restrictions to engage in activities competitive with any Person or to solicit suppliers, customers or employees anywhere in the world, or to participate in joint rail traffic movements with any third-party railroad at any location;

(vi) all Contracts that relate to the sale of assets, other than (A) assets that are obsolete or not used in the conduct of the Business, or (B) resulted or will result in payment to the Company of less than [redacted], in each case, pursuant to which any party thereto has any ongoing or continuing obligations;

(vii) any Contract for the sale, transfer, purchase, acquisition or other disposition of any material assets or equity interests or for any right of first refusal or similar right or obligation to sell, transfer, purchase, acquire or otherwise dispose of any material assets or equity interest, in each case, pursuant to which any party thereto has any ongoing or continuing obligations;

(viii) all Contracts that provide for the assumption of any Tax or environmental Liability of any other Person;

(ix) all Contracts for or related to any Indebtedness;

(x) all Contracts that obligate the Company to make any capital commitment or capital expenditure in excess of [redacted];

(xi) all Contracts that provide the Company rights as to operation, management or control of a partnership, joint venture or similar arrangement;

(xii) all Contracts providing for the acquisition or disposition of any business, stock or assets of any other Person (whether by merger, sale of stock, sale of assets or otherwise) by the Company pursuant to which the Company has any ongoing or continuing obligations, including any Contract that involves the payment or receipt of any earn-out or similar contingent payment;

(xiii) all employment agreements, Contracts with independent contractors or consultants (or similar arrangements), and transaction, retention, change of control, severance and similar Contracts;

(xiv) Contracts that relate to transportation, storage of rail equipment, handling or storage of commodities, or other transportation related activities (other than tariffs) pursuant to which the Company generated in excess of [redacted] during the prior fiscal year;

(xv) Contracts that are settlement or similar contracts with any Governmental Authority or that are any other settlement or similar Contracts pursuant to which the Company is obligated to pay consideration after the date of this Agreement in excess of [redacted];

(xvi) all Contracts with any Governmental Authority;

(xvii) all guarantees of any Indebtedness, contract, or other obligation of another Person;

(xviii) all Contracts pursuant to which the Company holds trackage rights, haulage rights, or the right to use or operate over, to interchange, switch or handle rail cars, or to provide rail service to customers on, over or along a railroad line or other property of any third party;

(xix) all Contracts pursuant to which any third party holds trackage rights, haulage rights, or the right to use or operate over, to interchange, switch or handle rail cars, or to provide rail service to customers on, over or along a railroad line or other property used in the conduct of the Business of the Company;

(xx) all collective bargaining agreements or other agreements or Contract with any labor organization, union or association to which the Company is a party;

(xxi) all Contracts limiting the future disposition, transfer or sale of the Company's assets or rights, other than general restrictions on the assignment of such Contract;

(xxii) all Contracts providing for an assignment of track of the Company for purposes of Section 45G of the Code;

(xxiii) any Related Party Agreement; and

(xxiv) any other Contract that is material to the Company and not previously disclosed pursuant to this Section 4.06(a).

(b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor, to the Sellers' Knowledge, any other party thereto is in breach of or default under (or is alleged in writing to be in breach of or default under) or has provided or received any notice in writing of any intention to terminate, any Material Contract. To the Sellers' Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. A true and complete copy of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) has been made available to Buyer.

Section 4.07. Title to Assets; Real Property.

(a) The Company has good and valid title, free and clear of Liens except for Permitted Liens, to (and, in the case of owned Real Property, valid and marketable fee simple title to), or a valid leasehold interest in, or valid easements and rights of way to use in the manner used by the Company as of the date hereof, all Real Property and tangible personal property and other assets reflected in the Balance Sheet, other than properties and assets that have been sold or otherwise disposed of by the Company in the Ordinary Course since [redacted], that are not required for the operation of the Company's Business in the Ordinary Course, or that have been replaced. The Company owns or has a valid leasehold interest in, or has valid license to use, all of the tangible personal property necessary for the conduct of its Business as presently conducted. The Company, as lessee, has the right under valid leases to use, possess and control all tangible personal property used (and not owned) by such Person as now used, possessed and controlled by the Company. All such properties and assets (including leasehold interests) are free and clear of Liens except for Permitted Liens.

(b) Section 4.07(b) of the Seller Disclosure Letter sets forth a true, correct and complete list of each parcel of Real Property owned in fee simple by the Company. A copy of all title policies, surveys, and any other material documentation in the possession of the Company that relate to the owned Real Property has been made available to Buyer. Except as set forth on Section 4.07(b) of the Seller Disclosure Letter, (i) the Company has not granted, is a party to or, to Sellers' Knowledge, is aware of the existence of any outstanding options, rights of first offer, rights of first refusal, or other Contracts to purchase any owned Real Property, or any portion thereof or interests therein; (ii) the Company has not (A) mortgaged or granted a deed of trust or analogous Lien on any of its owned Real Property or (B) subleased or licensed to a Person any material portion of such owned Real Property, and (iii) the Company has not received notification from any Governmental Authority of any pending or, to Sellers' Knowledge, threatened,

condemnation, zoning, eminent domain or other similar proceedings or transfer in lieu thereof with respect to any of such owned Real Property.

(c) Section 4.07(c) of the Seller Disclosure Letter sets forth a true, correct and complete list of all Real Property leases, licenses and occupancy rights agreements (if any), including all amendments, modifications and agreements related thereto, with respect to which the Company is the lessee (collectively, the "**Leases**"). The Company is not a party to any Contract to purchase any leased Real Property or interest therein relating to, or intended to be used in the operation of, the Business as currently conducted, except to the extent any such Contract to purchase may be set forth in any of the Leases or has otherwise been made available to Buyer. A copy of each Lease has been made available to Buyer.

(d) Except as set forth in Section 4.07(d) of the Seller Disclosure Letter, as of the date hereof, (i) the Company has, or will on the Closing Date have, a valid leasehold interest in its leased Real Property, free and clear of all Liens (except for Permitted Liens) except as the enforceability thereof may be limited by the Enforceability Exceptions; (ii) the Company has paid all rents and additional amounts that are due and has performed all material obligations required to be performed by it under each Lease, including paid any deferred rents, whether due to COVID-19 or otherwise; (iii) there is no uncured default under any Lease by the Company or, to Sellers' Knowledge, any other party thereto, nor has the Company received or delivered written notice of any claim of such default; (iv) no event has occurred that, with the passage of time or the giving of notice or both, would constitute a material default by the Company or, to Sellers' Knowledge, any other party thereto; (v) to Sellers' Knowledge, no security deposit or portion thereof deposited with respect to any Lease has been applied in respect of a breach or default by the Company which has not been redeposited in full; (vi) the other party to any Lease is not an Affiliate of any Seller and otherwise does not have any economic interest in, the Company; (vii) the Transaction, the other transactions contemplated hereby and the documents to be delivered at or before Closing (A) do not require the consent of any other Person due to the terms of any Lease, whether as deemed "assignment," "change of control," or otherwise; (B) will not result in a breach or default under any Lease; (C) will not give rise to any termination or recapture rights under any Lease; (D) will not otherwise cause such Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing; and (E) will not trigger any options, rights of first offer, rights of first refusal or other conditions with regard to interests in the owned Real Property; (viii) the Company has not, and will not have as of the Closing Date, subleased, licensed, or otherwise granted any Person the right to use or occupy any material portion of the Real Property that is the subject of such Lease; and (ix) the Company has the right to occupy each parcel of Real Property under each Lease pursuant to the terms of the relevant Lease and to use such Real Property in the operation of its Business.

(e) All buildings, structures, improvements, fixtures, building systems and equipment, and all components thereof, located on the owned Real Property and any Real Property under any Lease are in good operating condition and repair (normal wear and tear excepted) for the operation of the Business as currently conducted. There are no anticipated capital expenditures due, planned or required within the [redacted] in connection with the owned Real Property or any Real Property under any Lease. Each owned Real Property and the Real Property under any Lease is in compliance with applicable laws, including, without limitation, zoning laws, and with the

requirements of the Americans with Disabilities Act (to the extent that the Company is obligated to comply with such laws).

Section 4.08. Facilities and Railroad Assets.

(a) The Company holds valid property interests and operating rights in and to the rail lines depicted on Annex 1, and to the yards, side tracks, spur tracks, other similar rail facilities appurtenant thereto, and all transloading facilities, storage tanks, and other tangible assets and facilities (collectively, the "**Facilities**") sufficient to permit the Company to conduct its Business utilizing the Facilities as such Business is conducted by the Company on the date of this Agreement. The Company is not a party to any Contract or subject to any Governmental Order that would deprive the Company of the ability to operate substantially as the Company operates utilizing the Facilities on the date of this Agreement.

(b) The Company owns, leases or has the legal right to use all rail cars, locomotives, tracks and other tangible assets and properties used in the conduct of the Business of the Company as currently conducted (together with the Facilities, the "**Railroad Assets**"). Section 4.08(b) of the Seller Disclosure Letter sets forth a list of all locomotives that are owned or leased by the Company. The Railroad Assets are in good operating condition and repair (subject to reasonable wear and tear given the age and use of such Railroad Assets), are in compliance with all applicable Laws, and are suitable for the purposes for which they are used by the Company in its Business as currently conducted.

(c) The Company has rights over a contiguous right-of-way with no gaps or strips between the end points of the Company's rail lines, sufficient to conduct rail operations in substantially the same manner as the rail operations are conducted by the Company as of the date of this Agreement.

Section 4.09. Intellectual Property.

(a) Section 4.09(a) of the Seller Disclosure Letter contains a correct, current and complete list of all (i) Company IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and the inventor(s), if any; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration, or application serial number, the issue, registration or filing date; and the current status; and (ii) all other Intellectual Property used in the Company's Business as currently conducted. Except as set forth in Section 4.09(a) of the Seller Disclosure Letter, all required filings and fees related to the Company IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Company IP Registrations are otherwise in good standing. Except as set forth in Section 4.09(a) of the Seller Disclosure Letter, the Company owns or has the right to use all Intellectual Property necessary to conduct the Company's Business as currently conducted (the "**Company Intellectual Property**").

(b) The Company Intellectual Property and the Company's conduct of its Business as currently conducted, has not, and does not infringe, violate or misappropriate the Intellectual Property of any Person and no Person is infringing, violating or misappropriating any Company Intellectual Property.

(c) The computer hardware, servers, networks, platforms, peripherals, data communication lines, and other information technology equipment and related systems, including any outsourced systems and processes, that are owned or used by the Company (the "**Company Systems**") are sufficient for the needs of the Company's Business as currently conducted. The Company has used its commercially reasonable efforts, consistent with applicable industry best practices, to protect the integrity and security of the Company Systems and the data and other information stored or processed thereon. The Company (i) maintains commercially reasonable backup and data recovery, disaster recovery, and business continuity plans, procedures, and facilities; (ii) acts in compliance therewith; and (iii) tests such plans and procedures on a regular basis, and such plans and procedures have been proven effective upon such testing.

Section 4.10. Insurance.

(a) Section 4.10(a) of the Seller Disclosure Letter sets forth a list of all policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company as of the date hereof, and relating to the assets, Business, operations, Employees, officers and directors of the Company or with respect to which the Company is a named insured or otherwise the beneficiary of coverage (collectively, the "**Insurance Policies**"), including the named insureds, policy/bond number, insurers, major limits, deductibles, and term under each Insurance Policy. Copies of the Insurance Policies have been made available to Buyer. Such current Insurance Policies are in full force and effect and have been in full force and effect at all times since [redacted]. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. All such Insurance Policies (i) are valid and binding in accordance with their terms; (ii) are provided by carriers who are financially solvent; and (iii) have not been subject to any lapse in coverage. There are, and since [redacted], have been no claims related to the Business of the Company pending under any such Insurance Policies as to which coverage has been denied. The Company is not in default under, nor has otherwise failed to comply with, any provision contained in any such Insurance Policy.

(b) The Company has provided proper notice under the Insurance Policies for any claims of injury, damage to property, or other covered events of which it is aware since [redacted], including for those incidents set forth in Section 4.10(b) of the Seller Disclosure Letter. To the Sellers' Knowledge, there are no claims for cumulative injury or exposure, and the Company has not received any attorneys' liens with regard to said claims.

Section 4.11. Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.11(a) of the Seller Disclosure Letter, there are, and since [redacted], have been, no Actions pending or, to Sellers' Knowledge, threatened against or by the Company.

(b) Except as set forth in Section 4.11(b) of the Seller Disclosure Letter, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any properties or assets of the Company.

Section 4.12. Operational Matters.

(a) Section 4.12(a) of the Seller Disclosure Letter lists:

(i) all citations, notices of violations or notices of investigation received by the Company or any Seller since [redacted] resulting in liability (or alleging liability if no final determination of liability has been made) to the Company;

(ii) all orders, consent orders, administrative or judicial enforcement proceedings from any Governmental Authority received by the Company or any Seller since [redacted] relating to safety or health matters involving the Business or operations of the Company;

(iii) all operating restrictions or slow orders currently in effect on the rail lines used in the conduct of the Business of the Company; and

(iv) all accidents or incidents since [redacted] that have or reasonably would be expected to result in a claim of liability against the Company, including any reportable injuries or derailments or damage to property, in excess of [redacted].

(b) The Company is a Class III rail carrier pursuant to the classifications set forth at 49 C.F.R. § 1201.1-1.

Section 4.13.Compliance with Laws; Permits.

(a) The Company is, and since [redacted] has been, in compliance in all material respects with all Laws applicable to it or its Business, properties or assets. Since [redacted], the Company has not received any written notice from any Governmental Authority claiming a violation of any applicable Laws by the Company that remains uncured, and there is no pending, or to the Sellers' Knowledge, threatened, proceeding concerning the Company's compliance with any Laws.

(b) (i) All Permits required for the Company to conduct its Business currently and since [redacted] have been obtained by it and are valid and in full force and effect; (ii) all fees and charges with respect to such Permits have been paid in full; (iii) the Company operates or is prepared to operate the facilities authorized by the Permits in accordance with their respective terms, and such operation is in compliance in all material respects with such Permits; and (iv) no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any such Permit.

Section 4.14.Environmental Matters.

(a) Except as set forth in Section 4.14(a) of the Seller Disclosure Letter, the Company is, and during the [redacted] has been, in compliance in all material respects with all Environmental Laws.

(b) Except as set forth in Section 4.14(a) of the Seller Disclosure Letter, the Company has not received from any Person, or is subject to, any (i) Environmental Notice, Environmental

Claim, or Governmental Order, consent decree or settlement regarding Environmental Laws or Hazardous Materials, or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of on-going obligations or requirements.

(c) The Company has obtained and is, and during the [redacted] has been, in compliance in all material respects with all Environmental Permits necessary for the ownership, lease, operation or use of its Business or assets, all such Environmental Permits are in full force and effect in accordance with Environmental Laws, and all such Environmental Permits are identified in Section 4.14(c) of the Seller Disclosure Letter. A timely renewal application has been filed for any such Environmental Permit that will expire within [redacted] after the date hereof, and the Company has not received a written notice threatening to revoke, modify, cancel or terminate any such Environmental Permit. The execution, delivery and performance by Sellers of this Agreement and the other Ancillary Agreements to which each Seller is a party and the consummation of the transactions contemplated hereby and thereby by Sellers do not and will not require any notice to, or approval or other consent from, any Governmental Authority for all such Environmental Permits to remain in full force and effect after Closing. There is no condition, event or circumstance relating to Environmental Laws or Hazardous Materials that would reasonably be expected to prevent or impede, after the Closing Date, the ownership, lease, operation or use of the Business or assets of the Company in any material respect as currently carried out, or that would reasonably be expected to result in a Material Adverse Effect.

(d) No Real Property or Facilities currently, or to the Sellers' Knowledge, any real property formerly owned, operated or leased by the Company are listed on, or have been proposed for listing on, the National Priorities List (or Superfund Enterprise Management System (SEMS)) under CERCLA, or any similar state list.

(e) There are no underground storage tanks currently located on the Real Property or Facilities.

(f) There has been no Release of any Hazardous Material at, in, under, from, on or migrating to the Real Property, the Facilities or any other property currently operated by the Company or, to the Sellers' Knowledge, any property formerly owned, leased or operated by the Company, or any off-site location to which Hazardous Materials generated by the Company were sent for treatment, recycling, storage or disposal, in each case, in violation of Environmental Law or in a manner that would reasonably be expected to result in material liability or require notification, investigation, or remediation pursuant to Environmental Law.

(g) The Company has not assumed by Contract, or, to the Sellers' Knowledge, by operation of Law, any material liability of a third party arising under or related to any Environmental Law or Hazardous Material.

(h) No Liens pursuant to Environmental Laws have been or are imposed on the Real Property or the Facilities, and, to the Sellers' Knowledge, no such Liens have been threatened.

(i) Sellers have made available to Buyer correct copies of all environmental reports, assessments, audits, notices of violations, Governmental Orders, Environmental Permits, and all

other material environmental, health, and worker safety documents pertaining to the Real Property or the Company and its operations, or its properties or to any property formerly owned, leased or operated by the Company, that are in any Seller's or the Company's possession or reasonable control.

Section 4.15. Employee Benefit Matters.

(a) Section 4.15(a) of the Seller Disclosure Letter contains a true and complete list of each Company Benefit Plan and designates the Company Benefit Plan which is sponsored or maintained by the Company. For purposes of this Agreement, "**Company Benefit Plan**" means (i) any employee benefit plan as defined in section 3(3) of ERISA (whether or not subject to ERISA), and (ii) any other employment, consulting, independent contractor, pension, retirement, savings, health or welfare-benefit, flexible spending account, group insurance, bonus, severance pay, retention, change in control, deferred compensation, excess or supplemental benefit, paid time off, vacation, stock, stock option, equity or equity-based compensation, phantom stock, profit-sharing, fringe benefit, perquisite, tax gross-up, indemnification, compensation and incentive plan, contract, scheme, program, fund, commitment, agreement, or arrangement of any kind, whether written or oral, formal or informal qualified or nonqualified, or funded or unfunded, in each case, (A) which pertains to any employee, former employee, director, officer, shareholder, member, manager, consultant, or independent contractor of the Company or (B) to which the Company or any Affiliate thereof is or has been a party or by which any of them is or has been bound, (C) which is sponsored or maintained by the Company, (D) with respect to which the Company, or any Affiliate thereof contributes or has an obligation to contribute, or (E) with respect to which the Company, or any Affiliate thereof may otherwise have any liability (including any contingent liability and any liability of such plan or arrangement formerly maintained by the Company, any Affiliate thereof).

(b) True and complete copies of all Company Benefit Plans (and, if applicable, related trust or funding agreements, insurance policies and service provider agreements) and all amendments not already incorporated thereto, and written descriptions if not reduced to a written document, have been made available to Buyer, together with (i) the [redacted] annual reports (Form 5500) required to be filed (ii) the most recent summary plan description and all summaries of material modifications, (iii) annual nondiscrimination testing results for most recent [redacted], if applicable, and (iv) all documents, if any, filed with and all communications to or from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or any other Governmental Authority during [redacted].

(c)

(i) no Company Benefit Plan or related trust is intended to be qualified under Section 401(a) or 501(a) of the Code, respectively;

(ii) each Company Benefit Plan has been operated or administered in accordance with and is in compliance with its terms in all material respects and all applicable Laws;

(iii) all benefits, contributions and premiums required by and due under the terms of each Company Benefit Plan or applicable Law have been timely paid or have been accrued in accordance with the terms of the Company Benefit Plan, all applicable Laws and GAAP, and none of the Company Benefit Plans has any unfunded liabilities as of the date of this Agreement that are not reflected in the Financial Statements;

(iv) with respect to the Company Benefit Plan, no event has occurred or is reasonably expected to occur that has resulted in or would subject the Company to a Tax under Section 4971 of the Code or the assets of the Company to a lien under Section 430(k) of the Code; and

(v) there is not and has not been, nor is there pending or, to the Sellers' Knowledge, threatened, audit, inquiry, examination, claim or dispute relating to a Company Benefit Plan, other than claims for benefits in the ordinary course, and no Company Benefit Plan has within the [redacted] to the date hereof been the subject of an examination or audit by a Governmental Authority.

(d) The Company has never sponsored, maintained, contributed to or been required to contribute to any, and has no Liability (including Liability on account of any Company ERISA Affiliate) in respect of any, (i) "multiemployer plan" as defined in Sections 3(37) of ERISA, (ii) plan subject to the funding requirements of Section 412 of the Code, Title IV of ERISA or Section 302 of ERISA, (iii) "multiple employer plan" as described in Section 413(c) of the Code or (iv) "multiple employer welfare arrangement" within the meaning of 3(40)(A) of ERISA, and none of the Company or any Company ERISA Affiliate has any Liability or any obligation under Section 302 or Title IV of ERISA or Section 412 of the Code.

(e) No Company Benefit Plan provides for medical, life insurance or other welfare-type benefits to any employees of the Company after their employment is terminated (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state law regarding medical continuation coverage ("**COBRA**")), and the Company has never promised to provide such post-termination benefits or has any obligation to provide such benefits. The Company has no Liability (including Liability on account of any Company ERISA Affiliate) on account of a violation of COBRA.

(f) No Company Benefit Plan constitutes in any part a "nonqualified deferred compensation plan" within the meaning of Section 409A(d)(1) of the Code. The Company does not have any Liability in connection with a violation of the Patient Protection and Affordable Care Act of 2010, the Health Care and Education Reconciliation Act of 2010 or under Chapter 43 of the Code.

(g) Except as set forth in Section 4.15(g)of the Seller Disclosure Letter, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby could (either alone or in conjunction with any other event): (i) result in the payment to any current or former employee, director or consultant of the Company or any Employee of any money or other property; (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any current or former employee, director or consultant of the Company, any Employee or otherwise under any

Company Benefit Plan; (iii) limit or restrict the ability of Buyer or its Affiliates to merge, amend or terminate any Company Benefit Plan; or (iv) result in any "parachute payment" within the meaning of Section 280G(b) of the Code. The Company has no obligation to pay any tax "gross-up" or similar "make-whole" payments to any current or former employee, director or consultant of the Company, including, but not limited to, under Sections 409A or 4999 of the Code.

Section 4.16. Employment Matters.

(a) Attached to Section 4.16 (a) of the Seller Disclosure Letter is a census listing each Employee and each independent contractor of the Company containing for each such individual: (i) name and status as an employee or contractor; (ii) work location (city and state); (iii) position and job title; (iv) fulltime, part-time, or temporary status; (v) base salary or base hourly wage rate; (vi) visa status, if applicable, (vii) termination date, if applicable, and (viii) designation of whether they are classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar state law. The Company has made available all written employee handbooks, policies, programs and arrangements to Buyer, and has no material unwritten employee policies, programs, or arrangements.

(b) As set forth in Section 4.16(b) of the Seller Disclosure Letter, the Company is not, nor was a party to or bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization involving any employees of the Company. The Company is not, nor since [redacted] has been, engaged in any unfair labor practice, and there is (i) no unfair labor practice charge or complaint pending nor, to the Sellers' Knowledge, threatened against the Company before the National Labor Relations Board or the National Mediation Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is pending or, to the Sellers' Knowledge, threatened against the Company. (ii) no strike, labor dispute, picketing, slow down or other work stoppage or disruption pending against the Company or, to the Sellers' Knowledge, threatened against the Company and (iii) no union representation campaign, petition or proceeding existing with respect to the Employees or, to the Sellers' Knowledge, threatened against the Company.

(c) All persons employed by the Company are employees at-will or otherwise employed such that the Company may lawfully terminate their employment at any time, with or without cause and without incurring severance or similar costs. A true and correct copy of any form of non-competition, non-solicitation or confidentiality agreement currently in force with any of the Employees or consultants of the Company, and any variances therefrom, has been made available to Buyer, along with a list specifying which Employees are subject to such form agreement(s).

(d) the Company is, and has been since [redacted], in material compliance with all applicable Laws relating to labor, labor relations or employment, including, without limitation, any provisions thereof relating to equal employment opportunity, employment policies, discrimination, retaliation, harassment (including sexual harassment), whistleblowing, employee classification (including exempt versus non-exempt and contractor versus employee), wages, hours, overtime regulation, employee safety and health, immigration control and work authorization (including with respect to Form I-9), drug testing, termination pay, vacation pay, railroad retirement, railroad unemployment insurance, fringe benefits, collective bargaining and the payment and/or accrual of the same and all Taxes, insurance and all other costs and expenses

applicable thereto, and the Company is not liable for any arrearage, or any Taxes, costs or penalties for failure to comply with any of the foregoing. During [redacted], the Company has not implemented or effectuated a "plant closing," "mass layoff," partial "plant closing," "relocation," or "termination" (each as defined in the Worker Adjustment and Retraining Notification Act or similar state or local Law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company.

(e) There are, and since [redacted] have been, no Actions pending or, to the Sellers' Knowledge, threatened against the Company brought by, regarding, or otherwise involving any Employee or independent contractor of the Company, including, without limitation, any claim relating to employment discrimination, harassment, retaliation, equal pay, wage or hours violations, unpaid wages, misclassification, unpaid commissions, wrongful termination or any other employment related matter arising under applicable Laws.

(f) To the Sellers' Knowledge, during the [redacted], (i) no allegations of sexual harassment, discrimination or misconduct have been made against any (A) officer or director of the Company, or (B) any Employee of the Company who, directly or indirectly, supervises or has managerial authority over other employees or service providers of the Company, and (ii) the Company has not entered into any settlement agreement or conducted any investigation related to allegations of harassment, discrimination or misconduct by an employee, contractor, director, officer, or other representative of the Company.

(g) Each person whom the Company retains or has retained as an independent contractor qualifies or qualified as an independent contractor and not as an employee of the Company under all applicable Laws and any Company Benefit Plan.

Section 4.17. Taxes. Except as set forth in Section 4.17 of the Seller Disclosure Letter:

(a) (i) Each Seller and the Company has (A) duly and timely filed (including pursuant to applicable extensions granted without penalty) all Tax Returns required to be filed by it, and such Tax Returns are true, correct and complete in all material respects, and (B) timely paid in full all Taxes due and payable by it (including Taxes required to be withheld by it and regardless of whether shown as due on such Tax Returns); (ii) no deficiencies for any Taxes have been proposed, asserted or assessed in writing against any Seller or the Company which deficiencies have not since been resolved; and (iii) there are no Liens for Taxes upon the assets of any Seller or the Company except for statutory liens for current Taxes not yet due.

(b) There are no disputes, audits, examinations, investigations, suits, litigations or proceedings pending or threatened in writing in respect of any Taxes or Tax Returns of any Seller or the Company and neither any Seller nor the Company is a party to any litigation or administrative proceeding relating to Taxes.

(c) Neither a Seller nor the Company (i) is a party to any Tax allocation, sharing or indemnity contract or arrangement (other than a commercial contract entered into in the Ordinary Course, the primary purpose of which is not Taxes), (ii) has been a member of an affiliated, consolidated, unified or combined group (other than a group the common parent of which is the Company), or (iii) has any liability for Taxes of any Person (other than the Company) under

Treasury Regulation section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract, or otherwise.

(d) Neither a Seller nor the Company has been a "distributing corporation" or a "controlled corporation" in any distribution occurring during the [redacted] to the date of this Agreement in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(e) Neither a Seller nor the Company has granted any waiver of any federal, state, local or non-U.S. statute of limitations with respect to or granted any extension of a period of time for the assessment or payment of, any Tax.

(f) Neither a Seller nor the Company is or has been a party to any "listed transaction," or "reportable transaction" as defined in Section 6707A(c)(2) of the Code and Section 1.6011-4(b) of the Treasury Regulations.

(g) Each Seller and the Company has timely withheld all Taxes from payments to employees, agents, contractors, nonresidents and others required by applicable Law to be so withheld and timely remitted such amounts required to be remitted to the appropriate Taxing Authority.

(h) Section 4.17(h) of the Seller Disclosure Letter lists the tax classification of the Company for U.S. federal and state income Tax purposes and any election made under Treasury Regulations Section 301.7701-3 (or any applicable corresponding provision of state, local or non-U.S. Law).

(i) Neither any Seller nor the Company has, has ever had, or has ever applied for, any Indebtedness pursuant to Section 7(a) of the Small Business Act or Section 1102 of the CARES Act.

(j) There are no unpaid Taxes of the Company with respect to a Pre-Closing Tax Period that will not be reflected in Closing Indebtedness.

(k) The Company is and has always been properly treated as a partnership for U.S. federal income Tax purposes (and any corresponding provisions of state, local or foreign Law).

(l) Except as provided on Section 4.17(l) of the Seller Disclosure Letter, the Company is exempt from sales and use Taxes in each jurisdiction in which it operates. The Company has properly requested, received and retained all necessary exemption certificates and other documentation supporting any claimed exemption or waiver of Taxes on sales or similar transactions as to which it would otherwise have been obligated to collect or withhold such Taxes.

(m) No Taxing Authority with which a specific type of Tax Return is not filed or a specific type of Tax is not paid, in respect of the Business or the Company has claimed that such a Tax Return must be filed or such a Tax must be paid or that any Seller, in respect of the Business, or the Company is or may be subject to taxation by that Taxing Authority. No issue has been raised by a Taxing Authority in any prior examination relating to the Business or the Company

which, by application of the same or similar principles, could reasonably be expected to result in a material proposed deficiency for any subsequent taxable period.

(n) The Company has elected out of the "centralized partnership audit" regime pursuant to Section 6221(b) of the Code and the Treasury Regulations thereunder (and any comparable provision of state or local Law) with respect to its 2020-2023 taxable years.

(o) The Company does not currently constitute or give rise to, or have ever constituted or given rise to, a "permanent establishment" or "trade or business" (or similar concept under applicable Tax Law) in any country other than the United States for any applicable Tax purpose.

Section 4.18. Brokers. Neither the Company, nor any of its officers or directors on behalf of the Company, has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated hereby.

Section 4.19. Transactions with Related Parties. Except as set forth on Section 4.19 of the Seller Disclosure Letter, no Related Party (a) is a party to any Contract with or binding upon the Company or any of its assets, rights or properties (each, a "**Related Party Agreement**"), (b) has any interest in any asset or property owned, leased or used by the Company, (c) provides any service to or for the benefit of the Company or (d) has engaged in any transaction with the Company within [redacted], other than arrangements or Contracts for employment.

Section 4.20. Material Customer; Material Vendor.

(a) Section 4.20(a) of the Seller Disclosure Letter sets forth a consolidated list of the top ten customers of the Company by dollar amount of revenues received for [redacted] and (iii) the Balance Sheet Date (each, a "**Material Customer**"). Since [redacted], neither the Company nor any Seller has received any written notice from any Material Customer that any such Material Customer intends to terminate its relationship with respect to the purchase of services from the Company.

(b) Section 4.20(b) of the Seller Disclosure Letter sets forth a consolidated list of the top ten vendors of the Company by dollar amount of purchases for [redacted] nd (iii) the Balance Sheet Date (each, a "**Material Vendor**"). Since [redacted], neither the Company nor Sellers has received any written notice from any Material Vendor and, to Sellers' Knowledge, no facts exist to the effect that any such Material Vendor will terminate its relationship with respect to the purchase of products or services by the Company.

Section 4.21. Campaign Finance.

(a) The Company is and since [redacted], has been in compliance in all material respects with all applicable Campaign Finance Laws.

(b) Neither the Company nor any Seller has received any written notice from, or is subject to, any pending Action or threatened Action of any Governmental Authority or other Person alleging that the Company (i) may be, or may have been, in material violation of any Campaign Finance Law or (ii) may have any Liabilities arising under applicable Campaign Finance Law, the subject of which is in each case unresolved.

Section 4.22. Lobbying.

(a) As set forth in Section 4.22 of the Seller Disclosure Letter, since [redacted], neither the Company nor any Seller has engaged, either directly or through their officers, employees or agents, in any activity that constitutes lobbying under the applicable Lobbying Laws of any jurisdiction in which the Company does business.

(b) The Company is and since [redacted] has been in compliance in all material respects with all applicable Lobbying Laws.

(c) Neither the Company nor any Seller has received any written notice from, or is subject to, any pending Action or threatened Action of any Governmental Authority or other Person alleging that the Company (i) may be, or may have been, in material violation of any Lobbying Law or (ii) may have any material Liabilities arising under applicable Lobbying Law, the subject of which is in each case unresolved.

Section 4.23. Anti-Corruption; Sanctions.

(a) The Company, and its directors, officers, employees, and, to the Sellers' Knowledge, agents, or other Representative of the foregoing, are and have been for the [redacted] in compliance with Anti-Corruption Laws.

(b) For the [redacted], neither the Company nor any of its directors, officers, employees, nor, to the Sellers' Knowledge, agents, or other Representative of the foregoing, has offered, promised, provided, or authorized the provision of any money, property, or other thing of value, directly or indirectly, to any Person to improperly influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of their employer, or otherwise violated any Anti-Corruption Laws.

(c) The Company has not (i) made any voluntary, directed, or involuntary disclosure to any Governmental Authority or similar agency with respect to any alleged act or omission arising under or relating to any non-compliance with any Anti-Corruption Laws; (ii) been the subject of any inquiry or enforcement proceedings for violations of Anti-Corruption Laws; or (iii) violated or received in writing any notice, request, penalty, or citation for any actual or potential non-compliance with Anti-Corruption Laws.

(d) The Company has in place policies and procedures designed to prevent its officers, employees, contractors, sub-contractors, service providers, agents, and intermediaries from undertaking any activity, practice, or conduct that would constitute an offence under Anti-Corruption Laws.

(e) The Company and its directors and officers, and to the Sellers' Knowledge, its employees, agents, or any other Persons authorized to act, or acting, on behalf of the foregoing, are, and for the [redacted] have been, in compliance with applicable Sanctions. Neither the Company nor any of its respective directors, officers, or, to Sellers' Knowledge, employees, agents, or any other Persons authorized to act, or acting, on behalf of the Company, (i) is a Sanctioned Person, (ii) has, in the [redacted], directly or indirectly, engaged in any dealings with or involving any Sanctioned Person or Sanctioned Country. The Company has not received any allegation, inquiry, notice or communication that alleges that the Company or any director, officer, employee, agent, representative, or other Person acting for or on behalf or at the direction thereof may have violated any Sanctions, and, to Sellers' Knowledge, the Company is not aware of any such circumstances presently in existence likely to give rise to any such allegation, inquiry, notice or communication. The Company maintains policies and procedures designed to ensure compliance with Sanctions.

Section 4.24. Disclaimer. Except for the representations and warranties expressly set forth in Article 3 or this Article 4, neither Sellers, the Company nor any other Person on behalf of Sellers or the Company makes any express or implied representation or warranty in connection with the transactions contemplated hereby. Neither Sellers, the Company nor any other Person will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer or its Representatives or Affiliates, or Buyer's or its Representatives' or Affiliates' use of, any information, documents, projections, forecasts or any other material made available to Buyer or its Representatives or Affiliates in certain "data rooms" or management presentations in connection with Buyer's consideration and review of the transactions contemplated hereby, unless any such information is included in a representation or warranty contained in Article 3 or this Article 4.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as of the date hereof and as of the Closing Date that:

Section 5.01. Corporate Existence and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer has the requisite power and authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as now being conducted.

Section 5.02. Authority. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, are within its powers, and have been duly authorized by all necessary action on the part of Buyer. This Agreement has been, and each

Ancillary Agreement to which Buyer is a party will be, duly and validly executed and delivered by Buyer, and, assuming the due and valid execution by the other parties hereto and thereto, this Agreement and each Ancillary Agreement to which Buyer is a party constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to the Enforceability Exceptions.

Section 5.03. Consents and Approvals. No consent, approval, clearance, waiver, Permit or Governmental Order of or from, or filings or registrations with, or notice to, any Governmental Authority or with any third Person are necessary in connection with the execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party or the consummation by Buyer of the transactions contemplated hereby and thereby, except for [redacted] except where the failure to obtain such consent, approval, clearance, waiver, Permit or Governmental Order would not prevent, materially delay or materially impede the performance by Buyer of its obligations under this Agreement or to consummate the Transaction.

Section 5.04. Noncontravention. Neither the execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party nor the consummation by Buyer of the transactions contemplated hereby and thereby, will (a) violate any provision of the Organizational Documents of Buyer, or (b) assuming that the consents, approvals and filings referred to in Section 5.03 are duly obtained or made, (i) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Buyer or any of its respective properties or assets, or (ii) violate, conflict with, result in a breach of any provision of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Buyer under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Buyer is a party, or by which it or any of its properties or assets may be bound or affected, except in the case of clause (b) above where the failure of such consents, approvals or filings to be obtained or made would not reasonably be expected to prevent, materially delay or materially impede the performance by Buyer of its obligations under this Agreement or to consummate the transactions contemplated hereby.

Section 5.05. Sufficient Funds. At the Closing, Buyer will have access to sufficient cash and other sources of immediately available funds to pay the amounts to be paid in accordance with the terms of Section 2.02(a) and any other amounts contemplated to be paid at the Closing to consummate the Transaction on the terms and subject to the conditions set forth herein.

Section 5.06. Litigation. There are no Actions pending or, to Buyer's Knowledge, threatened against or by Buyer or any of its Affiliates that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated hereby.

Section 5.07. Brokers. There is no investment banker, financial advisor, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer or any of its Affiliates who may be entitled to any fee or commission in connection with the Transaction.

Section 5.08. Purchase for Investment. Buyer is purchasing the Purchased Membership Interests for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Buyer has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Purchased Membership Interests and is capable of bearing the economic risks of such investment. Buyer has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the purchase of the Purchased Membership Interests with the Company's management. Buyer understands that the Purchased Membership Interests have not been registered under the Securities Act of 1933, as amended. Buyer understands that the Purchased Membership Interests are "restricted securities" under applicable United States federal and state securities Laws and that, pursuant to these laws, Buyer must hold the Purchased Membership Interests indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Buyer understands that no public market now exists for the Purchased Membership Interests and that Seller has made no assurances that a public market will ever exist for the Purchased Membership Interests.

Section 5.09. No Other Representations. Notwithstanding the delivery or disclosure to Buyer or any of its Representatives or Affiliates of any documentation or other information by Sellers, the Company or any of their Representatives or Affiliates with respect to any one or more of the foregoing matters, Buyer (on behalf of itself and its Affiliates) acknowledges and agrees that no representation or warranty of any kind whatsoever, express or implied, at law or in equity, is made or shall be deemed to have been made by or on behalf of Sellers, the Company or any of their Affiliates, except for the representations and warranties expressly set forth in Article 3 and Article 4.

ARTICLE 6
COVENANTS

Section 6.01. Conduct of the Company.

(a) From the date hereof until the earlier of the termination of this Agreement in accordance with Section 9.01 and the Closing Date, except: as required by this Agreement; as required by Law or any Governmental Authority with jurisdiction over any Seller or the Company; as disclosed on Section 6.01 of the Seller Disclosure Letter; or with Buyer's written consent, Beneficial Owners shall cause the Company to: (i) conduct its Business in the Ordinary Course and (ii) use commercially reasonable efforts to maintain and preserve intact its Business, relationships with customers, suppliers, employees, Governmental Authorities, and other Persons having dealings with the Company.

(b) Without limiting the generality of the foregoing, from the date hereof until the earlier of the termination of this Agreement in accordance with Section 9.01 and the Closing Date, except: as required by this Agreement; as required by Law or at the direction of any Governmental Authority with jurisdiction over the Company; as disclosed on Section 6.01 of the Seller Disclosure Letter; or with Buyer's written consent, the Company shall not, and Sellers shall not permit the Company to:

(i) amend its Organizational Documents;

(ii) issue, deliver, sell, pledge or otherwise transfer, dispose of or authorize the issuance, delivery, sale, pledge or other transfer or disposition of, or grant any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any Membership Interests or other ownership interests in the Company;

(iii) incur any Indebtedness or grant any Liens (other than a Permitted Lien);

(iv) (A) declare, set aside, make or pay any dividend or distribution in respect of the Membership Interests of the Company or (B) repurchase, redeem or otherwise acquire any outstanding equity interests or other securities of, or other ownership interests in, the Company;

(v) (xi) enter into any Contract that would be a Material Contract if entered into prior to the date of this Agreement or modify, amend or terminate any Material Contract (other than an expiration of the term of any Material Contract in accordance with its terms); provided, however, that the foregoing shall not restrict the Company from renewing a Material Contract on the same terms other than an increase to the rates charged by the Company thereunder and so long as such renewal does not exceed a term of [redacted];

(vi) merge or consolidate with any other Person, or acquire any material assets;

(vii) make any material loans, advances or capital contributions to, or material investments in, any other Person;

(viii) change the Company's methods of accounting, or any accounting policy or practice, except for any such change required by reason of a concurrent change in GAAP or other applicable accounting standards;

(ix) (A) enter into any employment, independent contractor, consulting or other compensatory agreement or relationship with any Employee, contractor or consultant who was not an Employee of or contractor or consultant to the Company on the date hereof whose annual base salary, annualized wages or annualized fees, as applicable, equal or exceed [redacted] or any other individual service provider who was not a service provider on the date hereof whose annualized fees are expected to equal or exceed [redacted]; (B) adopt or increase any severance or termination pay for any Employee or other service provider; (C) increase the compensation payable to any Employee (or individual who would be an Employee if employed on the date hereof) whose annual base salary or annualized wages equal or exceed [redacted] or any other service provider (or individual who would be a service provider if engaged on the date hereof) whose annualized fees equal or exceed [redacted]; (D) terminate the employment or services of any Employee or other service provider (or individual who would be an Employee or service provider if employed or engaged on the date hereof) whose annual base salary or annualized wages equal or exceed [redacted] or any other service provider whose annualized fees equal or exceed [redacted] (except for cause); or (E) establish, amend, terminate or enter into any

Company Benefit Plan (or employee benefit plan, arrangement or agreement that would be a Company Benefit Plan if in effect on the date hereof), or accelerate the vesting, funding or time of payment or provide discretionary benefits under the Company Benefit Plan;

(x) enter into any agreement or arrangement that expressly limits or otherwise restricts in any material respect the Company from engaging or competing in any line of business, in any location or with any Person;

(xi) make, change or revoke any election with regard to Taxes, enter into any written "closing agreement" with a Taxing Authority with respect to Taxes, make any change in any method of Tax accounting, settle any Tax claim or controversy, enter into any contract relating to Tax (other than a contract entered into in the Ordinary Course, the principal purpose of which is not related to Tax), or amend any Tax Return;

(xii) adopt a plan of liquidation or dissolution;

(xiii) change in any material respect its practices in connection with the payment of payables or the collection of receivables;

(xiv) abandon or discontinue to operate its Business (including providing rail service) utilizing the Facilities;

(xv) grant to any Person any easement, license, trackage rights, haulage rights or other right to use, access or operate over, to interchange, switch or handle rail cars, or to provide service to customers on, over or along any track, facilities or other property owned or used in the Business of the Company;

(xvi) take any action, other than the filing of bona fide claims, that would invalidate or would make an Insurance Policy void or voidable or might result in an increase in the premium payable under an Insurance Policy or prejudice the ability to effect equivalent insurance in the future, or fail to cause each Insurance Policy or suitable replacements thereof, to be in full force and effect through the close of business on the Closing Date;

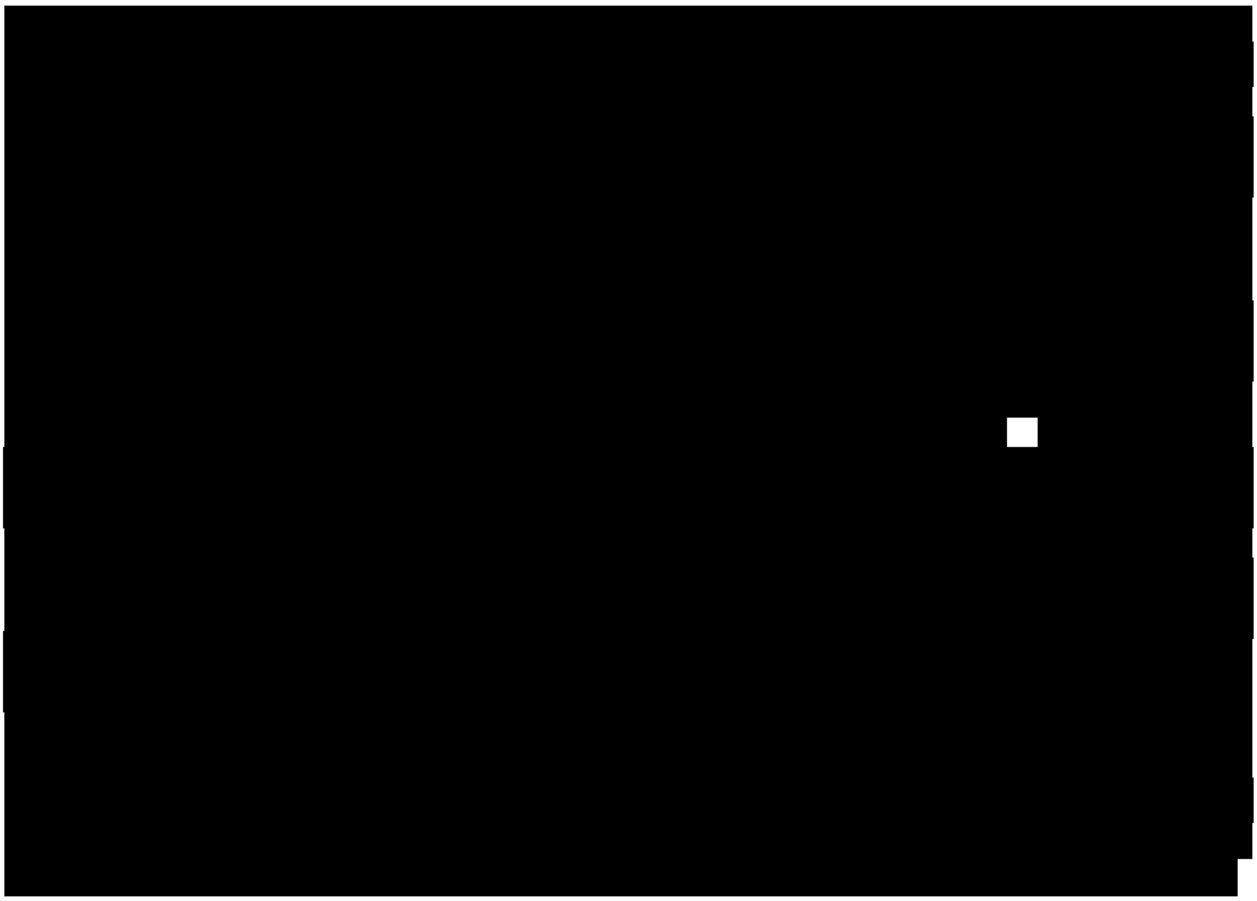
(xvii) transfer, lease, sell, assign or otherwise dispose of any assets used other than in the Ordinary Course;

(xviii) initiate or settle any Action; or

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

Section 6.02. Efforts; Further Assurances.

(a) [redacted]



(b)

[redacted]

(c) [redacted]

(d) [redacted]

(e) [redacted]

Section 6.03. Termination of Affiliate Obligations. Except for this Agreement, any Ancillary Agreements and any ordinary course employment agreements with any Employees or as set forth on Section 6.03 of the Seller Disclosure Letter, on or before the Closing Date, all Related Party Agreements shall be terminated in full as of the Measurement Time without liability and, from and after the Measurement Time, (a) the Company shall have no surviving obligations or liabilities thereunder to any Related Party whatsoever, and (b) no Related Party (other than the Company) shall have any surviving obligations or liabilities thereunder to the Company whatsoever, in each case, in connection with such Related Party Agreements.

Section 6.04. Public Announcements. Buyer and Sellers agree that no public release or announcement concerning the terms of this Agreement or the transactions contemplated hereby shall be issued or caused to be issued by any Party or any of their respective Affiliates or Representatives without the prior written consent of Buyer and Sellers, as applicable, except for such release or announcement as may be required by Law, in which case the Party required to make the release or announcement shall use commercially reasonable efforts to allow the other Parties reasonable time to comment on such release (and will consider any such comments in good faith) or announcement in advance of such issuance. Nothing in this Section 6.04 shall limit or restrict Buyer Group from making non-public announcements regarding this Agreement and the transactions contemplated hereby to their and their Affiliates' respective Representatives as necessary in connection with the ordinary conduct of their respective businesses (so long as such Persons agree to keep the terms of this Agreement confidential) and nothing herein shall prevent Buyer Group from making customary disclosures [redacted], including the key economic terms of the transactions contemplated by this Agreement and the return realized as a result thereof, to current or prospective investors in connection with the fundraising, marketing or reporting activities.

Section 6.05. Access to Information; Confidentiality. The provisions of this Section 6.05 are not intended to violate 49 U.S.C. § 11904.

(a) From the date hereof until the earlier of the Closing Date and the date this Agreement is validly terminated, and subject to applicable Law and the Confidentiality Agreement, Sellers shall (and shall cause the Company to) (i) give Buyer and its Representatives reasonable access to the properties and employees of the Company during regular business hours and upon reasonable advance notice, including access to conduct any subsurface investigation or other form of environmental sampling or testing with respect to the Company's assets or properties or the Real Property, and (ii) furnish to Buyer and its Representatives such financial and operating data and other information relating to the Company as such Persons may reasonably request; provided that, (A) Buyer and its Representatives shall conduct any such activities in such a manner as not to interfere unreasonably with the Business or operations of the Company and (B) the Company shall not be required to take any action which would, in the reasonable judgment of the Company,

constitute a waiver of the attorney-client or other privilege or would compromise any confidential information.

(b) Notwithstanding anything in the Confidentiality Agreement to the contrary, the Parties agree that, from the date hereof until the earlier of the termination of this Agreement in accordance with Article 9 and the Closing, the Buyer Group may disclose Confidential Information (as defined in the Confidentiality Agreement) to their respective Representatives; provided that, such disclosures are made to Persons subject to an obligation of confidentiality with respect to such information. Upon the Closing, the Confidentiality Agreement shall automatically terminate in its entirety.

Section 6.06. Taxes.

(a) Notwithstanding anything to the contrary in this Agreement, Buyer shall pay when due, and be responsible for any sales, use, transfer, real property transfer, registration, documentary, stamp, value added, or similar Taxes and related fees and costs imposed on or payable in connection with the Transaction ("**Transfer Taxes**"). The Party responsible under Law for filing the Tax Returns with respect to such Transfer Taxes shall prepare and timely file such Tax Returns and promptly provide a copy of such Tax Return to the other Parties.

(b) The Parties acknowledge that, for U.S. federal income tax purposes (and relevant state and local income tax purposes), Buyer shall be treated as acquiring the assets of the Company pursuant to Revenue Ruling 99-6 Situation 2.

(c) No more than [redacted] following the Closing Date, Sellers' Representatives shall prepare a proposed price allocation among the assets of the Company (the "**Purchase Price Allocation**") and shall permit Buyer to review the allocation (together with any associated workpapers or supporting materials). Within [redacted] after delivery to Buyer, Buyer shall either (i) provide proposed changes to such Purchase Price Allocation or (ii) provide a written confirmation that it agrees with the allocation. Sellers' Representatives shall make any changes reasonably requested by Buyer and provide a revised draft to Buyer for their approval. The Purchase Price Allocation as prepared by Buyer and Sellers' Representatives and revised and approved by Sellers' Representatives and Buyer, respectively, shall be final and binding on the Parties and the Parties, as applicable, shall file or cause to be filed all Tax Returns in a manner consistent with the Purchase Price Allocation.

(d) For purposes of allocating Taxes in a Straddle Period to a Pre-Closing Tax Period, (i) with respect to any Taxes that are imposed on or with respect to income, gains, receipts, sales, property or payments, Taxes shall be allocated to a Pre-Closing Tax Period based on an interim closing of the books as of the close of business on the Closing Date and (ii) in the case of any other Taxes, by apportioning such Taxes on a per diem basis in proportion to the number of days in the relevant taxable period to and including the Closing Date relative to the full number of days in the relevant taxable period.

(e) The Company shall elect out of the "centralized partnership audit" regime pursuant to Section 6221(b) of the Code and the Treasury Regulations thereunder (and any comparable state or local Laws), with respect to its taxable year ending on the Closing Date. To the extent

applicable, Buyer and Sellers agree that in the event that an audit or examination of the Company by the IRS (or other applicable taxing authority) for a Pre-Closing Tax Period in which the Company was taxed as a partnership for income tax purposes (and for which an election was not made under Section 6221(b) of the Code or any comparable state or local law) results in any adjustment in the amount of any item of income, gain, loss, deduction, or credit of the Company or the distributive share thereof of any partner or member of the Company, or otherwise gives rise to any "imputed underpayment" of Taxes (as defined in Section 6225 of the Code or any corresponding applicable provisions of state and local Laws), the Company shall file an election under Section 6226 of the Code (and any corresponding applicable provisions of state and local Laws) for any such Pre-Closing Tax Period. Sellers shall cooperate with Buyer and the Company to ensure that the elections pursuant to this Section 6.06(e) are timely and effectively made, and, to the extent required, make any filings and take any actions to effect such elections.

(f) Buyer is prohibited from amending or otherwise changing any Company tax return filed prior to Closing without Sellers' written consent, which shall not be unreasonably withheld.

Section 6.07.Continuing Employees.

(a) [redacted] Buyer shall provide, or shall cause to be provided, to each Employee who is employed by the Company as of immediately prior to the Closing (each, a "**Continuing Employee**"): (i) a base salary rate that is not less than the base salary rate provided to such Continuing Employee as of immediately prior to the Closing Date and (ii) cash incentive compensation opportunities and other compensation and benefits that are substantially comparable in the aggregate to the compensation and benefits provided to the Continuing Employee as of immediately prior to the Closing Date (excluding any defined benefit, retiree welfare, change in control, retention or any one-time or special compensation or benefits). The employment of all Continuing Employees shall remain "at-will" after the Closing Date, subject only to any written employment agreement with a specific Employee (if any).

(b) The provisions of this Section 6.07 are for the sole benefit of the Parties and nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any Person (including, for the avoidance of doubt, any Continuing Employee or other current or former employee of the Company), other than the Parties and their respective permitted successors and assigns, any legal, equitable or other rights or remedies (including with respect to the matters provided for in this Section 6.07) under or by reason of any provision of this Agreement. Nothing in this Section 6.07 shall (i) constitute or be deemed to constitute the establishment, adoption or amendment of the Company Benefit Plan or any other employee benefit plan, program, agreement or other arrangement, or (ii) prevent Buyer or any Affiliate of Buyer from amending or terminating the Company Benefit Plan in accordance with its terms. None of Buyer, any Seller, the Company or any of their respective Affiliates shall have any obligation to continue to employ or retain the services of any Continuing Employee for any period of time following the Closing.

Section 6.08.Consents [redacted]

[redacted]

Section 6.09. Exclusivity. From the date hereof until the earlier of the termination of this Agreement in accordance with Article 9 and the Closing, each Seller shall (and shall cause their respective Affiliates and their respective Representatives to) not, directly or indirectly, through any representative or otherwise, (a) continue, solicit, entertain, initiate, facilitate, respond to or participate in or encourage discussions or negotiations with, or the submission of bids, offers, inquiries or proposals by, or provide information or access to any Person with respect to, whether directly or indirectly, an Alternative Transaction by any means whatsoever, (b) authorize, recommend, propose or enter into any confidentiality agreement, term sheet, letter of intent, purchase agreement or other agreement, arrangement or understanding regarding any Alternative Transaction or (c) provide any information to any other Person relating to or in connection with an Alternative Transaction. Each Seller shall (and shall cause each of their respective Affiliates and their respective Representatives to) immediately cease and terminate any discussions or negotiations with any third party that are ongoing with respect to any Alternative Transaction and shall request the return or destruction of any confidential information shared in connection with such discussions or negotiations, and terminate access to the Data Room by any Person and their representatives (other than Buyer or an Affiliate of Buyer and their respective Representatives). Each Seller agrees that, in the event any Person expresses an interest in acquiring or investing in the Company prior to Closing, whether directly or through an intermediary, such Seller shall inform the Buyer of the terms of such inquiry promptly and will provide all relevant details, including any correspondence or documentation in respect of such interest.

Section 6.10. [redacted]

(a) [redacted]

(i) [redacted]a

[redacted]

(ii) [redacted]

(b) [redacted]

(c) [redacted]

(d) [redacted]

[redacted]

Section 6.11. Mutual Release.

(a) Effective as of the Closing, except for any rights or obligations under this Agreement or any Ancillary Agreement, each Seller, on behalf of itself and the other Seller Released Parties (as defined below), and their respective successors and permitted assigns (collectively, the "**Seller Releasing Parties**"), hereby irrevocably and unconditionally releases, waives, and forever discharges the Company and any present and former, direct and indirect, incorporator, member, partner, stockholder, Affiliate, other Representative, successor or permitted assign of any of the foregoing (collectively, the "**Company Released Parties**") of and from any and all Actions, causes of action, executions, judgments, duties, debts, dues, accounts, bonds, Contracts and covenants (whether express or implied), and claims and demands whatsoever whether in Law or in equity (whether based upon contract, tort, strict liability, common law, statutory law or otherwise) (collectively, "**Claims**"), that each of the Seller Releasing Parties may have against any of the Company Released Parties, now or in the future, in each case in respect of any cause, matter or thing occurring or arising on or prior to the Closing Date.

(b) Effective as of the date hereof, except for any rights or obligations under this Agreement or any Ancillary Agreement, Buyer, on behalf of the Company, the other Company Released Parties, and their respective successors and permitted assigns (collectively, the "**Company Releasing Parties**" and together with the Seller Releasing Parties, the "**Releasing Parties**"), hereby irrevocably and unconditionally releases, waives, and forever discharges Sellers and their respective Affiliates and any present and former, direct and indirect, incorporator, member, partner, stockholder, Affiliate, other Representative, successor or permitted assign of any of the foregoing (the "**Seller Released Parties**") of and from any and all Claims that any of the Company Releasing Parties may have against each of the Seller Released Parties, now or in the future, in each case, in respect of any cause, matter or thing occurring or arising on or prior to the Closing Date.

(c) The rights and Claims waived by each of the Releasing Parties include claims for breach of contract, breach of representation or warranty, negligent misrepresentation and all other claims for breach of duty, indemnity or contribution, except for any rights or obligations under this Agreement or any Ancillary Agreement.

Section 6.12. Sellers' Representatives. Each Seller hereby irrevocably constitutes and appoints the Primary Sellers as the representatives ("**Sellers' Representatives**") to act on behalf of Sellers for purposes of this Agreement. Each Sellers' Representative shall have authority to give and receive notices on behalf of all Sellers and, prior to the Closing, the Company. Buyer shall be entitled to rely on any and all actions taken by any Sellers' Representative under this Agreement as the actions of Sellers without any Liability to, or obligation to inquire of, any Seller or other Person. Any notice delivered by Buyer to any Sellers' Representative shall be deemed to have been delivered to all Sellers. Buyer shall be entitled to make any payment required to be made to Sellers pursuant to this Agreement to either Sellers' Representative, and such payment shall be deemed to have been made to Sellers, with such Sellers' Representative bearing all

responsibility for, and Buyer shall have no Liability for, allocation of such payment among, and payment of such amounts to, Sellers.

Section 6.13. Post-Closing Receipts. If, after the Closing, any Party or its Affiliates receives any funds belonging to another Party or its Affiliate in accordance with the terms of this Agreement, the receiving Party will, or will cause its Affiliate to, promptly advise such other Party or its applicable Affiliate thereof, to segregate and hold such funds in trust for the benefit of the other Party or its Affiliate, and promptly deliver such funds to an account or accounts designated in writing by such other Party or its Affiliate. For the avoidance of doubt, any current assets included in the calculation of Closing Net Working Capital (including but not limited to earned but unbilled receivables) that are ultimately collected shall belong to the Buyer and its Affiliates (including the Company).

Section 6.14. [redacted]

Section 6.15. [redacted]

[redacted]

Section 6.16. [redacted]

[redacted]

Section 6.17. [redacted]

ARTICLE 7
CONDITIONS TO CLOSING

Section 7.01. Conditions to Obligations of Buyer and Sellers. The obligations of Buyer and Sellers to consummate the Closing are subject to the satisfaction or, where legally permitted, waiver by each Party, of each of the following conditions:

(a) The STB Approval shall have been obtained and shall be in full force and effect, and neither the STB nor any other Governmental Authority shall have imposed any conditions or

obligations on the Buyer or the Company that would materially impair the operation of the Business of the Company, consistent with past practice.

(b) No Governmental Authority or federal or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law, Governmental Order or other notice (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the transactions contemplated by this Agreement.

(c) The FCC Filings shall have been filed.

(d) All conditions set forth on Annex 2 shall have been satisfied.

Section 7.02. Conditions to Obligation of Buyer. The obligation of Buyer to consummate the Closing is subject to the satisfaction or, in the sole discretion of Buyer, waiver of each of the following further conditions:

(a) the representations and warranties of each Seller (other than Seller Fundamental Representations made by such Seller) made in Article 3 and Article 4 of this Agreement (without giving effect to any "material", "materiality" or "Material Adverse Effect" qualification contained in such representations and warranties), shall be true and correct in all material respects as of the Closing Date (except for those representations and warranties which refer to facts existing at a specific date, which shall be true and correct as of such date);

(b) the Seller Fundamental Representations made by each Seller shall be true and correct in all respects as of the Closing Date (except for those representations and warranties which refer to facts existing at a specific date, which shall be true and correct as of such date);

(c) each Seller shall have performed in all material respects all of its respective obligations hereunder required to be performed by it at or prior to the Closing;

(d) Buyer shall have received a certificate signed by each Seller to the effect that the conditions set forth in Section 7.02(a), Section 7.02(b) and Section 7.02(c) have been fulfilled;

(e) Seller shall have delivered, or caused to be delivered, to Buyer the deliverables set forth in Section 2.02(b);

(f) [redacted]

(g) Sellers shall have provided evidence reasonably acceptable to Buyer that the loan owed by [redacted] to the Company shall have been repaid at or prior to Closing; and

(h) the consents or waivers set forth on Section 3.02 of the Seller Disclosure Letter shall have been obtained.

Section 7.03. Conditions to Obligation of Sellers. The obligation of each Seller to consummate the Closing is subject to the satisfaction or, in the sole discretion of such Seller, waiver of each of the following further conditions:

(a) The representations and warranties of Buyer made in Article 5 of this Agreement (without giving effect to any "material", "materiality" or "Material Adverse Effect" qualification contained in such representations and warranties) shall be true and correct in all material respects as of the Closing Date (except for those representations and warranties which refer to facts existing at a specific date, which shall be true and correct as of such date);

(b) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing; and

(c) Sellers shall have received a certificate signed by Buyer to the effect that the conditions set forth in Section 7.03(a) and Section 7.03(b) have been fulfilled.

Section 7.04.Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in this Article 7 to be satisfied if such failure was caused by such Party's breach of, or failure to comply with, any provision of this Agreement.

ARTICLE 8
SURVIVAL [redacted]

Section 8.01. No Survival The Parties, each intending to modify any applicable statute of limitations, agree that (a) the representations and warranties in this Agreement shall terminate and be of no further force and effect as of the Closing and shall not survive the Closing for any purpose and thereafter there shall be no liability on the part of, nor shall any claim be made by, any Party or any of their respective Affiliates, and with respect to the Buyer, the Buyer Group, in respect thereof, and (b) after the Closing, there shall be no liability on the part of, nor shall any claim be made by, any Party or any of their respective Affiliates in respect of any covenant or agreement to be performed or to apply prior to the Closing. All covenants and agreements contained in this Agreement that contemplate performance thereof following the Closing or otherwise expressly by their terms survive the Closing will survive the Closing in accordance with their respective terms. Notwithstanding anything to the contrary contained in any provision of this Agreement, nothing in this Agreement shall limit (x) any Party from seeking to recover any damages with respect to a claim for Fraud, (y) any Party from seeking to specifically enforce, or seeking to recover any damages with respect to the breach of, any covenants to the extent such covenant by its terms contemplates performance after the Closing or (z) any Party's rights and remedies with respect to the adjustment to the Aggregate Purchase Price pursuant to Section 2.04 and Section 2.05.

Section 8.02. [redacted]

(a) [redacted]

[redacted]

(b) [redacted]

ARTICLE 9
TERMINATION

Section 9.01. Grounds for Termination. This Agreement may be terminated prior to the Closing as follows:

(a) By the mutual written consent of Sellers and Buyer;

(b) By Buyer at any time prior to the Closing, if (i) any Seller is in breach of the representations, warranties or covenants made by such Seller in this Agreement, (ii) such breach is not cured or capable of being cured by the earlier of the day prior to the End Date and [redacted] following written notice of such breach from Buyer (to the extent such breach is curable) and (iii) such breach, if not cured, would render the conditions set forth in Section 7.01 or Section 7.02 incapable of being satisfied; provided, however, that Buyer shall not be entitled to terminate this Agreement pursuant to this Section 9.01(b) if Buyer or any of its Affiliates is in breach of this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.03 to be satisfied;

(c) By Sellers at any time prior to the Closing, if (i) Buyer is in breach of the representations, warranties or covenants made by it in this Agreement, (ii) such breach is not cured or capable of being cured by the earlier of the day prior to the End Date and [redacted] following written notice of such breach from Sellers (to the extent such breach is curable) and (iii) such breach, if not cured, would render the conditions set forth in Section 7.01 or Section 7.03 incapable

of being satisfied; provided, however, that Sellers shall not be entitled to terminate this Agreement pursuant to this Section 9.01(c) if any Seller is in breach of this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.02 to be satisfied; or

(d) By Sellers, on the one hand, or Buyer, on the other hand, if the Closing shall not have occurred by [redacted] (the "**End Date**"); provided, however, that (i) Sellers shall not be entitled to terminate this Agreement pursuant to this Section 9.01(d) if any Seller is in breach of this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.02 to be satisfied; (ii) Buyer shall not be entitled to terminate this Agreement pursuant to this Section 9.01(d) if Buyer is in breach of this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.03 to be satisfied and (iii) the End Date shall be automatically extended until [redacted].

Section 9.02. Effect of Termination. If this Agreement is terminated as provided in this Article 9, this Agreement shall forthwith become void and have no effect, without liability on the part of any of the Parties and their respective Affiliates, including any member of the Buyer Group, or any of their respective Representatives, members or direct or indirect equity holders; provided that the Confidentiality Agreement, the provisions of this Section 9.02 and the provisions of Section 6.04 and Article 10 shall survive any such termination; and provided, further, that the termination of this Agreement shall not relieve any Party from any liability arising out a willful breach of this Agreement or the Fraud of such Party.

ARTICLE 10
MISCELLANEOUS

Section 10.01. Notices. All notices, requests and other communications to any Party hereunder shall be in writing and shall be given, if to Buyer, to:

Pinsly Railroad Company LLC
245 Riverside Ave., Suite 250
Jacksonville, FL 32202
Attn: Ryan Ratledge
E-mail: ryan.ratledge@pinsly.com

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

Prior to September 1, 2024:

Macquarie Infrastructure and Real Assets Inc.
125 W 55th Street, 15th Floor
New York, NY 10019
Attn: Henry Blackford
E-mail: henry.blackford@macquarie.com

From and after September 1, 2024:

Macquarie Infrastructure and Real Assets Inc.
660 Fifth Avenue
New York, NY 10103
Attn: Henry Blackford
E-mail: henry.blackford@macquarie.com

and:

E-mail: MAMRALegalNotices@macquarie.com

and:

Sidley Austin LLP
1000 Louisiana St., Suite 5900
Houston, TX 77002
Attn: Cliff W. Vrielink
E-mail: cvrielink@sidley.com

if to any Seller or Sellers' Representatives, to:

Donald Lee
Mark Holland
10003 NW Military Hwy, Suite 2213
San Antonio, TX 78231
E-mail: mark@hollandsatx.com
don@hondorailway.com

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

Slover & Loftus LLP
1828 L Street, NW
Suite 1000
Washington, D.C. 20036
Attn: Kelvin J. Dowd
E-mail: kjd@sloverandloftus.com

or such other address as such Party may hereafter specify for the purpose of giving notice to the other Parties. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made (a) as of the date delivered, if delivered personally, (b) on the date the delivering Party receives an affirmative confirmation (excluding automatic acknowledgement of receipt) during normal business hours from the Party to whom notice was intended (or if such affirmative confirmation is not received on the day of delivery, the next Business Day), if delivered by email (or at such other email for a Party as shall be specified in a notice given in accordance with this Section 10.01), (c) [redacted] after being mailed by registered or certified mail (postage prepaid, return receipt requested) or (d) [redacted] after being sent by overnight courier (providing proof of delivery).

Section 10.02. Amendments and Waivers.

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to this Agreement, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative with and not exclusive of any rights or remedies provided hereby, or by law or equity, and the exercise by a Party of any one remedy will not preclude the exercise by such Party of any other or further remedy.

Section 10.03. Expenses. [redacted]

Section 10.04. Binding Effect; Benefit; Assignment The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as expressly set forth in Section 10.13, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the Parties and their respective successors and permitted assigns. No Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other Party, and any purported assignment, delegation or other transfer of such rights or obligations in violation of this provision shall be null and void *ab initio*; provided, however, that Buyer may assign its rights and obligations hereunder without the prior written consent of the other parties to any member of the Buyer Group.

Section 10.05. Governing Law. This Agreement and any disputes arising from or relating to this Agreement (whether in contract, tort, or otherwise) shall be governed by and construed in accordance with the domestic Laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware, including with respect to statutes of limitations.

Section 10.06. Jurisdiction. The Parties agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with or relating to, this Agreement or the transactions contemplated hereby (whether brought by any Party or any of its Affiliates or against any Party or any of its Affiliates or any member of Buyer Group) shall be brought exclusively in the Delaware Chancery Court or, if such court shall not exercise jurisdiction, any federal court located in the State of Delaware or, if such court shall not exercise jurisdiction, the Superior Court of the State of Delaware, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding

brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 10.01 shall be deemed effective service of process on such Party.

Section 10.07. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.08. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by each other Party. Until and unless each Party has received a counterpart hereof signed by each other Party, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 10.09. Entire Agreement. This Agreement, the Ancillary Agreements, the Exhibits and Schedules hereto and thereto, and, subject to Section 6.05(a), the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject-matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, among the Parties with respect to the subject-matter hereof and thereof.

Section 10.10. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 10.11. Disclosure Letters. The Parties agree that any reference in a particular Section of either the Seller Disclosure Letter or the Buyer Disclosure Letter shall be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of Sellers or Buyer, as applicable, that are contained in the corresponding Section of this Agreement and (b) any other representations and warranties (or covenants, as applicable) of such Party that are contained in this Agreement to the extent the applicability to such other Section is reasonably apparent on the face of such disclosure or where noted with applicable cross-references. The inclusion of any information in the Seller Disclosure Letter or the Buyer Disclosure Letter, as applicable, shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a Material Adverse Effect or is outside the Ordinary Course. The information set forth in the Seller Disclosure Letter or the Buyer

Disclosure Letter is disclosed solely for the purposes of this Agreement, and no information set forth therein shall be deemed to be an admission by any Party of any matter whatsoever, including any violation of Law or breach of any Contract. The Seller Disclosure Letter and the Buyer Disclosure Letter and the information and disclosures contained therein are intended only to qualify and limit the representations, warranties and covenants contained in this Agreement. Nothing in the Seller Disclosure Letter or the Buyer Disclosure Letter shall be deemed to broaden the scope of any representation or warranty contained in this Agreement or create any representation, warranty or covenant.

Section 10.12. Specific Performance. The Parties agree that irreparable harm, for which monetary damages (even if available) would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the transactions contemplated by this Agreement) were not performed in accordance with their specified terms or in the event of any actual or threatened breach of this Agreement. Accordingly, the Parties acknowledge and agree that, except where this Agreement is validly terminated in accordance with Article 9, the Parties, on behalf of themselves and the third party beneficiaries of this Agreement provided in Section 10.13, shall be entitled to seek an injunction, specific performance or other equitable relief to prevent and/or remedy a breach or threatened breach of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which such Person is entitled at Law or in equity. Any Party or third party beneficiary of this Agreement provided in Section 10.13 seeking an injunction or injunctions to prevent a breach or breaches of this Agreement or to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with the request for or grant of any such order or injunction. Each Party agrees not to assert that a remedy of specific performance is unenforceable, invalid, contrary to Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy.

Section 10.13.No Recourse Against Non-Parties. Notwithstanding anything that may be expressed or implied in this Agreement, all claims or causes of action (whether in contract or in tort, in Law or in equity) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby may be made only against the Persons that are expressly identified as parties hereto. No Person who is not a named party to this Agreement, including without limitation any past, present or future director, officer, incorporator, member, manager, partner, direct or indirect equity holder, Affiliate, agent, employee, attorney or other Representative of any named party to this Agreement or any Affiliate of the foregoing, including any member of Buyer Group (collectively, "**Non-Party Affiliates**"), shall have any Liability (whether in contract or in tort, in law or in equity, or based upon any theory that seeks to impose Liability of an entity party against its owners or Affiliates) for any obligations or Liabilities arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation or execution, and each Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates; provided, however, that this Section 10.13 shall not prevent imposing Liability on Non-Party Affiliates with respect to a claim for Fraud. Non-Party Affiliates are expressly intended as third-party beneficiaries of this Section 10.13.

[Remainder of page intentionally left blank;
signature pages follow]

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

PINSLY RAILROAD COMPANY, LLC

By: 

Name: Ryan Ratledge

Title: President & CEO

PUBLIC VERSION

BENEFICIAL OWNERS

Signed by:
Donald Lee
79CE7860CB8D47F...
Donald Lee

DocuSigned by:
Mark Holland
BE140ECA7FFA485...
Mark Holland

DocuSigned by:
Miles Lee
C1C634E8541349B...
Miles Lee

DocuSigned by:
Drew Holland
0B27CE2891724BC...
Drew Holland