

ENTERED
Office of Proceedings
October 11, 2019
Part of
Public RecordDentons US LLP
1900 K Street, NW
Washington, DC 20006
United States

dentons.com

October 11, 2019

BY E-FILEMs. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024Re: *Bessemer and Lake Erie Railroad Company – Acquisition and Operation – Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, New York* (Docket No. FD 36347)

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are two versions of the Application for a Minor Transaction (designated as BLE-1) of Bessemer and Lake Erie Railroad Company (“B&LE”). This is an amended submission to correct the signature page of Mitch Beekman in the “PUBLIC” and “HIGHLY CONFIDENTIAL” versions, as that page was inadvertently blank. Please replace the existing versions with these Amended versions.

Very truly yours,

/s/ Claire M. Maddox
Partner

Attachments

cc (w/ Public version of Application):

The Honorable Andrew Cuomo
The Honorable John B. Howard
The Honorable Marie Therese Dominguez
The Honorable Elaine L. Chao
The Honorable William P. Barr
The Honorable Joseph J. Simons

CM:sb

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY

— ACQUISITION AND OPERATION —

**CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
OSWEGO, JEFFERSON, SAINT LAWRENCE, AND FRANKLIN COUNTIES, NEW
YORK**

**APPLICATION FOR A
MINOR TRANSACTION**

Sean Finn
Olivier Chouc
CN
935 de La Gauchetière Street West,
16th Floor
Montreal, Quebec H3B 2M9

Kathryn J. Gainey
CN
Suite 500, North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004
202-347-7840

Claire M. Maddox
David A. Hirsh
James M. Guinivan
DENTONS US LLP
1900 K St., NW
Washington, DC 20006
202-496-7500

Attorneys for Bessemer and Lake Erie Railroad Company

October 10, 2019

TABLE OF CONTENTS

	<u>Page</u>
Table of Abbreviations	iv
Summary	3
B&LE’S Acquisition of the U.S. Massena Lines Is a Minor Transaction.....	3
Application Information.....	5
Brief Summary of Transaction	
Section 1180.6(a)(1)(i).....	6
Proposed Time Schedule	
Section 1180.6(a)(1)(ii).....	8
Purpose of the Transaction	
Section 1180.6(a)(1)(iii)	8
Nature and Amount of Any	
New Securities or Other Financial Arrangements	
Section 1180.6(a)(1)(iv).....	11
Public Interest Justifications	
Section 1180.6(a)(2)	11
Effects on Competition	
Section 1180.6(a)(2)(i).....	11
Financial Considerations, Operating	
Economies; Increase in Traffic, Revenue and Earnings	
Section 1180.6(a)(2)(ii).....	16
Effect of Increase in Total Fixed Charges	
Section 1180.6(a)(2)(iii)	16
Effect of Increase in Total Fixed Charges	
Section 1180.6(a)(2)(iv).....	16
Effect on Employees	
Section 1180.6(a)(2)(v).....	17
Effect on Inclusion of Other Railroads	
Section 1180.6(a)(2)(vi).....	17
Other Supporting Statements	
Section 1180.6(a)(3)	18

Opinion of Counsel	
Section 1180.6(a)(4)	19
List of States	
Section 1108.6(a)(5)	19
Maps (Exhibit 1)	
Section 1108.6(a)(6)	19
Nature and Terms of Proposed Transaction	
Section 1108.6(a)(7)(i).....	20
Agreement (Exhibit 2)	
Section 1180.6(a)(7)(ii).....	20
Description of Resulting Company	
Section 1180.6(a)(7)(iii)	20
Court Order (Exhibit 3)	
Section 1180.6(a)(7)(iv).....	21
Property Included in Transaction	
Section 1180.6(a)(7)(v).....	21
Description of Principal Routes, Termini Points of Interchange, and Mileage of Involved Lines	
Section 1180.6(a)(7)(vi).....	21
Government Financial Assistance	
Section 1180.6(a)(7)(vii).....	23
Environmental Data	
Section 1180.6(a)(8)	23
Operating Plan – Minor (Exhibit 15)	
Section 1108.8(c)	25
Conclusion	27
Signature of Applicant’s Officer	
Section 1180.4(c)(2)(i)	
Certification of Deputy Corporate Secretary	
Section 1180.4(c)(2)(i)	
Certificate of Service	

APPENDICES, EXHIBITS, AND SUPPORTING STATEMENTS

Appendix 1 Opinion of Counsel for Applicant

Exhibit 1 Maps

Map A — CN System Map, Including B&LE

Map B — CSX System Map

Map C — Proposed Transaction Massena Lines

Map D — Route over Alternate Buffalo Gateway for CN System-CSX Interline Traffic Originating in New York and Destined for Montreal, Quebec

Map E — Map showing CSX's Dewitt Yard and CSX's Belle Isle Yard

Exhibit 2 Purchase and Sale Agreement between Canadian National Railway Company and Bessemer and Lake Erie Railroad Company and CSX Transportation, Inc., CSX Intermodal Terminals, Inc., and St. Lawrence and Adirondack Railway Company

Exhibit 15 Operating Plan-Minor

Attachment A—Labor Impact Exhibit

Verified Statement of Janet Drysdale

Attachment A—Inbound and Outbound Cars Over MSTR at Massena (2015-September 2019)

Letters of Support

Letter from Alcoa Canada Cie dated September 20, 2019

Letter from the Massena Terminal Railroad Company dated September 27, 2019

Letter from the Honorable John Katko and the Honorable Elise Stefanik dated October 2, 2019

TABLE OF ABBREVIATIONS

Acquisition	The acquisition, pursuant to the PSA, of the Canadian Massena Lines by CNR and the U.S. Massena Lines by B&LE
B&LE	Bessemer and Lake Erie Railroad Company
Board	Surface Transportation Board
Canadian Massena Lines	Those portions of the Massena Lines as are located in Canada, consisting of approximately 41.8 miles of CSX's Montreal Subdivision between CSX milepost QM 183.1 at or near the U.S.-Canada border and QM 226.1 at or near Beauharnois, Quebec (excluding the portion subject to the Beauharnois to Valleyfield Lease, which includes the Diageo Industrial Spur (MP QMD 0.10 to QMD 1.50) and the Valleyfield Industrial Track between milepost QMV 1.00 and QMV 1.80.
Closing	Closing of the Transaction, in accordance with the PSA.
CN	U.S. rail operating subsidiaries, including B&LE, of the Canadian National Railway Company.
CN System	The rail system operated by CN in the United States and by CNR in Canada, collectively.
CNR	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CSX	CSX Transportation, Inc.
FRA	Federal Railroad Administration
Massena Lines	Approximately 278.1 miles of rail line (including branch lines) between Beauharnois, Quebec (near Montreal) and Woodard, New York (near Syracuse), including certain branch lines and spurs.
MHWA	Mohawk, Adirondack, and Northern Railroad Corporation

MSTR	The Massena Terminal Railroad Company
NS	Norfolk Southern Corporation
NYOG	New York and Ogdensburg Railway Company, Inc.
PSA	Purchase and Sale Agreement, dated as of August 29, 2019, between CNR and B&LE and CSX Transportation, Inc., CSX Intermodal Terminals, Inc., and St. Lawrence and Adirondack Railway Company
PTC	Positive Train Control
PIH	Poison-by-inhalation hazardous materials
Transaction	The proposed acquisition and operation of the U.S. Massena Lines
U.S. Massena Lines	Those portions of the Massena Lines (approximately 236.3 miles) as are located in the United States and are subject to the Board’s regulatory jurisdiction.

The standard two-letter postal abbreviations (in particular, “NY” for New York) are used for U.S. states.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY

— ACQUISITION AND OPERATION —

**CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
OSWEGO, JEFFERSON, SAINT LAWRENCE, AND FRANKLIN COUNTIES, NEW
YORK**

**APPLICATION FOR A
MINOR TRANSACTION**

Bessemer and Lake Erie Railroad Company (“B&LE”)¹ files this minor application pursuant to 49 U.S.C. §§ 11323-11325 and 49 C.F.R. Part 1180 seeking approval from the Surface Transportation Board (the “Board”) for B&LE to acquire from CSX Transportation, Inc. (“CSX”) and operate certain rail lines in New York. B&LE is an indirect wholly owned rail carrier subsidiary of Canadian National Railway Company (“CNR”).²

CNR and B&LE have agreed to acquire from CSX approximately 278.1 miles of rail line between Beauharnois, Quebec (near Montreal) and Woodard, NY (near Syracuse), including

¹ Abbreviations and short forms have the meanings set forth in the Table of Abbreviations found at pages iv-v.

² “CN” refers to the U.S. rail operating subsidiaries, including B&LE, of CNR. B&LE and CNR’s other U.S. indirect rail carrier subsidiaries are operated as an integrated rail system, and thus are treated for STB regulatory reporting purposes by the Board as a single Class I rail carrier. *See Proposal to Require Consolidated Reporting by Commonly Controlled Railroads*, STB Ex Parte No. 634 (STB served Nov. 7, 2001). Where appropriate, the term “CN System” is used herein to refer to the rail system operated by CN in the United States and by CNR in Canada, collectively.

certain branch lines and spurs (the “Acquisition”). This is an end-to-end acquisition and will assure the continued efficient movement of interline traffic interchanged between the CN System and CSX via those lines, including overhead traffic. The proposed transaction before the Board involves B&LE acquiring from CSX those portions of the Massena Lines (approximately 236.3 miles) from Woodard, NY to the U.S./Canada border near Fort Covington, NY (the “U.S. Massena Lines”) (the “Transaction”).³ In addition to handling overhead traffic after consummation, B&LE also will provide rail service to local customers on the U.S. Massena Lines.⁴ B&LE looks forward to providing safe and effective rail service on the U.S. Massena Lines after Closing.

In this Application, B&LE respectfully requests Board approval for the acquisition and operation of the U.S. Massena Lines.⁵ The Application demonstrates that the Transaction: (1) is a minor transaction; (2) satisfies the criteria for approval under 49 U.S.C. § 11324(d) (i.e., it is not likely to substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States); and (3) will not result in changes in carrier operations that would exceed the thresholds for an environmental review or that would require historic assessment under the Board’s regulations.

³ CNR is acquiring the Canadian portion of the Massena Lines from CSX’s St. Lawrence and Adirondack Railway Company subsidiary, located entirely in Canada, generally between Beauharnois, Quebec (near Montreal) and the U.S./Canada border near Fort Covington, NY.

⁴ In this minor application, “overhead traffic” refers to traffic interchanged between the CN System and CSX that does not originate or terminate on either the U.S. Massena Lines or on a shortline connected with the U.S. Massena Lines. “Local traffic” refers to railcars that originate or terminate either on the U.S. Massena Lines or on a shortline connected with the U.S. Massena Lines.

⁵ See Map A in Exhibit 1.

SUMMARY

B&LE requests the Board to approve B&LE's minor application to acquire from CSX and to operate approximately 236.3 miles of rail line, constituting the U.S. Massena Lines, located generally between the U.S./Canada border near Fort Covington, NY, and Woodard, NY (north of Syracuse), as described more precisely below and as identified on Map C of Exhibit 1.

B&LE'S PROPOSED ACQUISITION OF THE U.S. MASSENA LINES IS A MINOR TRANSACTION

The Transaction is a minor transaction, as that term is defined in the Board's regulations at 49 C.F.R. §1180.2(c).

The Transaction does not involve the control or merger of two Class I railroads and therefore is not a major transaction under 49 C.F.R. §1180.2(a).

In addition, the Transaction is not a "significant" transaction under 49 C.F.R. §1180.2(b). Under the Board's rules, a non-major transaction is not significant if a determination can be made either:

(1) [t]hat the transaction clearly will not have any anticompetitive effects, or

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

49 C.F.R. § 1180.2(b). The Board has found that it was unlikely the transaction would have "any anticompetitive effects" in a case where it appeared no "shipper would have fewer competitive rail options." *CSX Transp., Inc. & Delaware and Hudson Railway Company, Inc.—Joint Use Agreement*, STB Docket No. FD 35348, slip op. at 7 (STB served May 27, 2010).

As shown below, the Transaction will clearly have no anticompetitive effects and therefore qualifies as a minor transaction under Section 1180.2(b) of the Board's regulations.

B&LE will substitute for CSX to provide service to local customers on the U.S. Massena Lines and also to move overhead traffic over the U.S. Massena Lines to interchange with CSX. This Transaction will move the interchange between the CN System and CSX from Huntingdon, Quebec to Woodard, New York, and thus increase the CN System length of haul. The Transaction will not reduce competitive rail alternatives for customers located on the U.S. Massena Lines and will not significantly affect the handling of overhead traffic over the U.S. Massena Lines. Under these circumstances, this Transaction is appropriately classified as a minor transaction consistent with prior Board classifications of minor transactions. *See, e.g., Norfolk S. Ry.—Acquisition & Operation—Certain Rail Lines of Delaware & H. Ry.*, STB Docket No. FD 35873, slip op. at 2 (STB served Dec. 16, 2014) (finding end-to-end line sale to be a minor transaction); *CSX Transp., Inc. & Delaware and H. Ry.—Joint Use Agreement*, Docket No. FD 35348, slip op. at 7 (STB served May 27, 2010) (finding transaction to be minor where there did “not appear to be a likelihood of any anticompetitive effects” and where it did not appear “that any shipper would have fewer competitive rail alternatives”); *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, STB Finance Docket No. 35147, slip op. at 9 (STB served June 26, 2008) (finding end-to-end transaction to be minor transaction, where it appeared that no shipper would have fewer competitive rail options).

Moreover, even if the Transaction were to result in anticompetitive effects (which it will not), such effects would clearly be outweighed by the Transaction’s anticipated contribution to the public interest in meeting significant rail transportation needs. In June 2018, CSX announced that it was rationalizing its system by selling several lines, including the U.S. Massena Lines. In addition to its other benefits, acquisition of the U.S. Massena

Lines by B&LE will assure the continued efficient movement of existing overhead interline traffic between the CN System and CSX over those lines.

Finally, because the Transaction is a line sale involving two independent Class I railroads, the Transaction does not fall within any of the class exemptions set forth in 49 C.F.R. § 1180.2(d).

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

APPLICATION INFORMATION

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

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

49 U.S.C. § 11324(d). The Board must approve such a transaction unless it finds that it will cause “adverse competitive impacts that are both ‘likely’ and ‘substantial,’” and that those impacts outweigh the public benefits of the transaction and cannot be mitigated through Board-imposed conditions.⁶ The Board and its predecessor agency have long recognized that end-to-

⁶ *Norfolk S. Ry.—Acquisition & Operation—Certain Rail Lines of Delaware & H. Ry.*, Docket No. FD 35873, slip op. at 14 (STB served May 15, 2015) (“*NS/D&H*”), *petition for rev. dismissed sub nom. Riffin v. STB*, No. 16-1043 (D.C. Cir. Mar. 31, 2017). Public interest factors are considered only where significant anticompetitive effects are found. *Canadian Nat’l Ry.—Control—EJ&E W. Co.*, STB Finance Docket No. 35087, Decision No. 16, slip op. at 13 (STB served Dec. 24, 2008).

end transactions, such as this one, are not likely to raise competitive issues.⁷ Like other end-to-end transactions, this Transaction would clearly have no anticompetitive effects, let alone ones that are “likely” or “substantial.”

Further, as this Application will demonstrate, the Transaction will contribute to the public interest in meeting significant rail transportation needs, so that even if there were anticompetitive impacts, they would clearly be outweighed by the Transaction’s contribution to the public interest in meeting those needs.

B&LE requests that the Board approve B&LE’s acquisition and operation of the U.S. Massena Lines under the statutory standard set forth in 49 U.S.C. § 11324(d). In support of this position, and pursuant to the Board’s regulations at 49 C.F.R. Part 1180, B&LE submits the following information:

Section 1180.6 Supporting Information

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

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

⁷ E.g., *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, STB Finance Docket No. 35147, slip op. at 5 (STB served Mar. 10, 2009) (“This agency has long held that end-to-end transactions are unlikely to generate the types of competitive problems that often arise in parallel transactions.”); *see also id.* (finding that the end-to-end transaction would not adversely affect competition); *Norfolk S. Corp.—Control & Consolidation Exemption—Algers, W. & W. Ry.*, STB Finance Docket No. 34839, slip op. at 8 (STB served Feb. 15, 2007) (finding no “likelihood that a substantial lessening [sic] of competition” would result from the end-to-end transaction); *Huron & E. Ry.—Acquisition—CSX Transp., Inc. Line Between Bad Axe & Saginaw, MI*, Finance Docket No. 31316, 1988 WL 225140, at *5 (ICC Dec. 16, 1988) (finding that the end-to-end transaction “w[ould] not result in the loss of, or any reduction in, competitive rail services”).

On August 29, 2019, CSX Transportation, Inc., CSX Intermodal Terminals, Inc., and St. Lawrence and Adirondack Railway Company (together, the “CSX Parties”) executed a Purchase and Sale Agreement (the “PSA”) with CNR and B&LE. The PSA provides for the sale to CNR and B&LE of CSX’s Massena Lines, consisting of approximately 278.1 miles of CSX rail lines located generally between Beauharnois, Quebec, and Woodard, NY.

In this Application, B&LE seeks the Board’s approval for the acquisition and operation of the U.S. Massena Lines, a total of approximately 236.3 miles between the U.S.-Canadian border near Fort Covington, NY and Woodard, NY near Syracuse. The lines are identified in greater detail in § 1180.6(a)(7)(vi) below and shown in Map C of Exhibit 1.

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

Bessemer and Lake Erie Railroad Company
17641 Ashland Avenue
Homewood, IL 60430
(708) 332-4360

Also involved in the Transaction is the following carrier as seller:

CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

Questions and correspondence concerning this Application may be addressed to:

Claire M. Maddox
Dentons US LLP
1900 K St., NW
Washington, DC 20006
(202) 496-7308
claire.maddox@dentons.com

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

The Transaction is scheduled to be consummated immediately upon satisfaction of all conditions precedent set forth in the PSA, including approval of B&LE's Application by the Board and the Board's approval decision becoming effective.

(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.

B&LE seeks authority to acquire and operate the U.S. Massena Lines, as described in section 1180.6(a)(1)(i) above.

The Transaction is an end-to-end line purchase by B&LE and CNR from CSX. Notably, as part of the Transaction, the CN System is re-purchasing the line from Huntingdon, Quebec to Massena, NY that CNR previously owned and that it sold in 1989 to Consolidated Rail Corporation ("Conrail"). CSX Corporation (CSX's parent) and Norfolk Southern Corporation (parent of Norfolk Southern Railway Company ("NS")) acquired control of Conrail in 1998, and some of its assets were divided between CSX and NS as provided in their transaction agreement, with the Massena Lines being transferred to CSX.⁸ The U.S. Massena Lines have been owned and operated by CSX since division of the Conrail assets in 1999.

As noted above, CSX announced in June 2018 that it was rationalizing its system by selling several lines, including the Massena Lines. The Massena Lines cross the U.S.-Canadian border at Fort Covington, NY. CSX's decision to sell the Massena Lines followed a thorough review of its entire network to identify lines that are not core to its business and

⁸ *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998), *pet. for review denied sub nom. Erie-Niagara Rail Steering Comm.*, 247 F.3d 437 (2d Cir. 2001).

could be more valuable to other operators well positioned to further improve the Lines and better serve local customers.

The CN System is seeking to acquire the Massena Lines to preserve its direct connection and gateway with CSX and extend the CN System's length of haul. In effect, the Transaction will result in moving the CN System-CSX interchange from Huntingdon, Quebec to Woodard, NY. More than 45% of the current carload traffic on the Massena Lines is overhead traffic exchanged between the CN System and CSX, for which the Massena Lines provide a direct connection and gateway. If the acquirer of the Massena Lines were a rail carrier outside of the CN System, then an additional railroad would operate as a bridge carrier between the CN System and CSX, adding another interchange and requiring coordination with and participation of a third carrier. This would reduce operating efficiency, increase costs, and increase transit times to the detriment of existing interline customers of the CN System and of CSX that move overhead traffic over the U.S. Massena Lines. If the CN System were to use an alternative gateway for current overhead traffic now moving over the U.S. Massena Lines, it would likely involve a longer, less efficient route, with higher transit times and costs over the next-closest gateway between the CN System and CSX for that movement. This would not be beneficial for rail customers.

For example, if existing northbound time-sensitive intermodal traffic on the Massena Lines originating in New York and destined for Montreal, Quebec was instead interchanged through the CN System-CSX gateway in Buffalo, NY (i.e., the next-closest gateway), it would take the traffic significantly out of route to the west before moving back east towards Montreal, as shown in Map D of Exhibit 1. The additional miles, transit time, and operating costs associated with such an alternate gateway would make it more difficult for the CN

System and CSX to offer joint-line service to customers that could compete effectively with other transportation alternatives.

Following B&LE's acquisition of the U.S. Massena Lines, B&LE will have opportunities to improve the efficiencies of operations along the U.S. Massena Lines. As described further in the Operating Plan (Exhibit 15), for example, CNR/B&LE will operate one pair of through trains per day between Taschereau Yard (in Montreal) and Woodard, NY for interchange with CSX. This will replace two CSX trains currently operating between Massena and Dewitt Yard, as well as two CSX transfer assignments now operating between Massena and Huntingdon, Quebec. Eliminating these two transfer assignments will avoid delays that result from coordinating crew schedules for those trains. This will improve overall efficiency of operations, reducing estimated total transit time by approximately 24 hours. (*See* Ex. 15 (Operating Plan) § II.B.) Also, eliminating these CSX train-to-CSX train connections could reduce switching activity at the Massena Yard.

B&LE also will work with customers on the U.S. Massena Lines to understand and identify their rail service needs, develop efficient plans for rail operations to their facilities, and help them grow their future businesses. B&LE would provide rail service to new local customers that may locate on the U.S. Massena Lines in the future. B&LE will maintain the U.S. Massena Lines to present Federal Railroad Administration ("FRA") track class standards, including FRA track class 3 for the mainline of the St. Lawrence Subdivision between Fort Covington and Woodard, and ensure that maintenance conforms to CN's standards. To that end, B&LE plans to spend approximately {{[REDACTED]}}⁹ for track work

⁹ All references to "\$" are to U.S. dollars. Material designated as Highly Confidential under B&LE's proposed protective order and redacted from this Application are set off with double brackets (i.e., "{{ }}").

(such as surface, ballast, and crossings) over the first three years after Closing and approximately {{[REDACTED]}} for bridge and structural work during the first five years after Closing. In addition, B&LE plans to spend approximately {{[REDACTED]}} for equipment, inspection vehicles, and tools that will be needed on the property following consummation of the Transaction. These investments reflect the CN System's robust capital program planned for the CN System, under which more than \$750 million will be spent on capital investments in the United States in 2019.¹⁰

B&LE will also interchange with three shortlines. As described further in the Operating Plan, the acquisition of the U.S. Massena Lines will give B&LE direct connections for interchange with three shortline railroads: (1) Mohawk, Adirondack, and Northern Railroad Corporation ("MHWA") at Carthage, NY; (2) New York and Ogdensburg Railway Company, Inc. ("NYOG") at Norwood, NY; and (3) the Massena Terminal Railroad Company ("MSTR") at Massena, NY. The PSA imposes no restrictions on the interchange of traffic with these carriers.

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

No new securities will be issued in connection with the Transaction. The only relevant financial arrangement is the payment of the purchase price by CNR and B&LE, as provided in the PSA (*see* section 1180.6(a)(2)(ii), below).

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

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation

¹⁰ See <https://www.cn.ca/en/about-cn/capital-investments-plan/>

of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

The Transaction would not result in lessening of rail competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

First, the Transaction would not have anticompetitive effects on rail transportation between the U.S. East Coast and the Canadian provinces of Quebec, New Brunswick, and Nova Scotia that are served by the Massena Lines. The Transaction is an end-to-end line Acquisition between the CN System and CSX. A principal effect of the Transaction would be to move the interchange point between CSX and the CN System south from Huntingdon, Quebec to Woodard, NY, thereby extending the length of the CN System's haul and shifting operations on the U.S. Massena Lines from CSX to B&LE, as well as the common carrier obligation to provide service to local rail customers located on the U.S. Massena Lines. As CN does not have a parallel line in New York State to the U.S. Massena Lines, the Transaction will not render other trackage duplicative or redundant. The CN System and CSX have no network overlap in the United States in the vicinity of the U.S. Massena Lines.

Second, customers located on the U.S. Massena Lines will not see reduction in rail service options or competition. Those customers currently receive direct service from a single carrier, CSX. The Transaction will maintain the competitive status quo by substituting direct CN service for direct CSX service, with no reduction in the number of competitive rail options available.

CN notes that as part of the sale of the Huntingdon-Massena line to Conrail in 1989, CNR retained limited trackage rights to exclusively serve "present industries [as of

1989] and their successors” on the main line between Fort Covington and Massena, NY.¹¹ Conrail had the exclusive right (held by CSX since 1999) to serve any new industries on that line between Fort Covington and Massena. Thus, no individual industry on that line segment has ever been served by more than one rail carrier. Today, there are no active customers on the St. Lawrence Subdivision main line between Fort Covington and Massena; thus there are no customers that CNR would be eligible to serve under the 1989 trackage rights agreement.¹² Customers on the St. Lawrence Subdivision between Fort Covington and Massena thus are currently directly served by CSX and no other rail carrier.

CNR’s retained 1989 trackage rights also permitted CNR to interchange with MSTR at Massena, NY, although CNR has neither operated to Massena nor conducted any interchange with MSTR for at least the last 14 years. Indeed, Alcoa owned MSTR until 2005, and when Alcoa sold MSTR to RailAmerica in 2005, it was recognized that MSTR had “a presently inactive interchange with the [CNR].”¹³ The inactive status of the former CNR-MSTR interchange at Massena was likewise acknowledged in subsequent filings in 2006, 2007, and 2012.¹⁴ Before Closing, CNR plans to seek formal discontinuance of its

¹¹ *Canadian Nat’l Ry.; Trackage Rights Exemption from Consolidated Rail Corp.*, ICC Finance Docket No. 31477 (Sub-No. 2), 54 Fed. Reg. 32,139 (Aug. 4, 1989).

¹² Today, there is one active customer at the Rooseveltown Industrial Track, but this branch was historically owned by Conrail and was not part of the 1989 sale. The Rooseveltown Industrial Track, which connects to the St. Lawrence Subdivision at Helena, NY, was never owned by CNR.

¹³ *RailAmerica, Inc.—Control Exemption—Point Comfort & Northern Ry., Rockdale, Sandow & Southern R.R. Co., The Massena Terminal Railroad Company, and Bauxite & Northern Ry.*, Finance Docket No. 34758, at 4 (filed Sept. 19, 2005).

¹⁴ *Genesee & Wyoming Inc.—Control—RailAmerica, Inc., Railroad Control Application*, Finance Docket No. 35654, App’x B, Description of RailAmerica U.S. Railroads, at 14 (filed Aug. 6, 2012) (“MSTR interchanges with CSXT at Massena Yard, and has a presently inactive interchange with the CN”); *Fortress Investment Group LLC,—Control—Florida East Coast Ry.*, Finance Docket 35031, Appendix A, at 17 (filed May 22, 2007) (same); *Fortress Investment*

inactive 1989 Conrail trackage rights on the St. Lawrence Subdivision between Fort Covington and Massena under the Board's class exemption at 49 C.F.R. § 1152.50 for trackage rights that have not been utilized within the last two years.

For at least the last 14 years, MSTR has interchanged with a single railroad throughout that period, and will continue to interchange with a single railroad after the Transaction. As explained in detail in the attached Verified Statement of Janet Drysdale ("Drysdale V.S."), with one exception, none of the traffic interchanged between MSTR and CSX moved from or to facilities directly served by CN. (*See Drysdale V.S.*, at 8.) Given these circumstances, the CN System could not have effectively competed for the movement of MSTR traffic via CNR's inactive trackage rights through the Province of Quebec. Indeed, MSTR, and its predominant customer, Alcoa, view the Transaction as merely substituting service by B&LE for service by CSX, perceive no competitive issues with the transaction, and strongly support the Transaction.¹⁵ The Transaction therefore will not meaningfully reduce competition for traffic interchanged with MSTR

Two other shortlines directly connecting with the U.S. Massena Lines, NYOG and MHLWA, interchange solely with CSX today and will continue to interchange with a single railroad (B&LE) after the Transaction.

The Transaction would also cause no reduction in the number of transloading or intermodal service options. CSX offers service to intermodal customers in the vicinity of the U.S. Massena Lines and beyond in New York. For example, CSX has an intermodal

Group LLC—Control Exemption—RailAmerica, Inc., Finance Docket No. 34972, Appendix A, at 17 (filed Dec. 1, 2006) (same).

¹⁵ See attached letters from MSTR and Alcoa supporting B&LE's acquisition of the U.S. Massena Lines.

yard at Dewitt Yard in Syracuse; intermodal facilities in Buffalo and Albany, New York; and a transloading terminal in Syracuse through its subsidiary, TRANSFLO. Given the continuing proximity of CSX's intermodal and transloading facilities to the Massena Lines, customers with an ability to use such facilities could seek intermodal or transloading services from CSX as a viable competitive alternative for customers utilizing all-rail service.

By maintaining the existing CN System-CSX gateway over the Massena Lines, without the need for an added interchange with a third rail carrier, the Transaction will preserve existing levels of competition for rail transportation to and from the Northeastern United States. This will enable the CN System and CSX to continue to efficiently provide interline service to customers shipping between U.S. East Coast markets and markets in the Canadian provinces of Quebec, New Brunswick, and Nova Scotia. The Transaction will ensure that a CN System-CSX routing via the Massena Lines will remain a strong competitive option for customers to efficiently move commodities between Canada and the Northeastern United States.

B&LE will invest in the U.S. Massena Lines as described above, including investments in equipment, inspection vehicles, and tools after consummation of the Transaction, as well as investments for track work and bridge and structural work within the first five years after Closing. B&LE will maintain the U.S. Massena Lines to the standard of the CN's rail network, which has a robust capital program. CN plans to invest more than \$750 million in capital investments in the United States in 2019.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

Under the PSA, CNR and B&LE would collectively pay { { [REDACTED] } }¹⁶ to the CSX Parties as the acquisition price for the Massena Lines and other property in Canada. (See Exhibit 2, PSA § 2.03(a).)

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

CN will not incur any increase in fixed charges (i.e., interest and other financial charges) as a result of the Transaction.

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

As described further in the Verified Statement of Janet Drysdale, the Transaction will preserve the pre-Transaction competitive status quo. After the Transaction, B&LE will provide the rail transportation services along the U.S. Massena Lines that are currently provided by CSX, including to local and overhead customers. No diversions of traffic from other railroads or transportation modes are anticipated that might adversely affect essential rail services provided by other carriers.

¹⁶ B&LE will file a public version of the PSA that redacts Highly Confidential financial information.

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

The effect of the Transaction on employees is addressed in the Labor Impact Exhibit set forth as Attachment A to the Operating Plan. B&LE does not have employees in New York and will therefore be hiring new employees in New York to operate the U.S. Massena Lines after Closing. B&LE plans to offer priority hiring consideration to employees currently employed by CSX on the U.S. Massena Lines. No current CN employees in the United States will be adversely affected by the Transaction.

As described in the Operating Plan, CSX currently employs 50 employees on the U.S. Massena Lines who may be adversely affected by the Transaction.

Employees adversely affected by the Transaction will be entitled to the employee protective conditions and other procedures adopted in *New York Dock—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979), *as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc.*, 6 I.C.C.2d 799, 814-26 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

No employee protection agreements have been reached, and any required pre-consummation implementing agreements will be reached before Closing.

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

Inclusion is not available as a form of relief in a minor transaction. As there will be no anticompetitive effects, there would be no basis for including another railroad in the Transaction.

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

The Board’s review of “minor” transactions focuses primarily on the anticipated competitive impacts of the proposed transaction.¹⁷ The Board must approve such a transaction unless it finds that it will cause “adverse competitive impacts that are both ‘likely’ and ‘substantial,’” and that those impacts outweigh the public benefits of the transaction and cannot be mitigated through Board-imposed conditions.¹⁸ Examples of adverse competitive impacts “would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two.”¹⁹ The proposed Transaction between the CN System and CSX proposed in this Application would have no such anticompetitive effects. To the contrary, it would serve the public interest, as discussed above in Section 1180.6(a)(1)(iii).

The information furnished in this Application, including the supporting Verified Statement of Janet Drysdale, demonstrates that the Transaction satisfies the applicable statutory criteria for approval. Moreover, as discussed above, MSTR and Alcoa strongly support the Transaction.²⁰ Further, Congressman John Katko and Congresswoman Elise M. Stefanik, both of New York, also support the Transaction, noting that it will bring the CN System’s

¹⁷ See *NS/D&H*, slip op. at 14; *Canadian Nat’l Ry.—Control—EJ&E W. Co.*, STB Finance Docket No. 35087, Decision No. 16, slip op. at 13 (STB served Dec. 24, 2008), *pet. for review denied sub nom. Village of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2011); *Canadian Pac. Ltd.—Control—Davenport, R.I. & N.W. Ry.*, Finance Docket No. 32579, 1995 WL 55450, at *5 (ICC served Feb. 10, 1995).

¹⁸ *NS/D&H*, slip op. at 14. Public interest factors are considered only where significant anticompetitive effects are found. *Canadian Nat’l Ry.—Control—EJ&E W. Co.*, STB Finance Docket No. 35087, Decision No. 16, slip op. at 13 (STB served Dec. 24, 2008).

¹⁹ *Blackstone Cap. Partners—Cont. Exempt—CNW Corp. et al.*, 5 I.C.C.2d 1015, 1019 (1989).

²⁰ See attached letters from Alcoa and MSTR.

freight services into New York and “offer[] enhanced competition and new service opportunities.”²¹

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

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

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

B&LE owns and operates approximately 159 miles of railroad in the State of Ohio and Commonwealth of Pennsylvania.

CSX owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Provinces of Ontario and Québec.

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

Exhibit 1 contains Map A showing the lines of the CN System; Map B showing the lines of CSX’s rail system; Map C showing the lines that B&LE proposes to acquire from CSX in the

²¹ See attached letter from the Honorable John Katko and the Honorable Elise Stefanik.

Transaction; Map D showing the circuitry of the route that, in the absence of the Acquisition, traffic now moving over the Massena Lines would alternatively take in order to move over the next closest direct CN System-CSX gateway; and Map E showing CSX's Dewitt Yard and CSX's Belle Isle Yard.

(7) Explanation of the transaction.

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

B&LE seeks authority from the Board to acquire and operate the U.S. Massena Lines, as described in section 1180.6(a)(1)(i) above. The consideration for the purchase of the Massena Lines and other property in Canada is set forth in section 1180.6(a)(2)(ii), above.

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

A redacted copy of the PSA is provided in Exhibit 2 to the public version. An unredacted copy of the PSA is being submitted under seal pursuant to the proposed protective order.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

Not applicable.

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

Not applicable.

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

The Transaction does not involve all of the property of B&LE or CSX. A detailed description of the property involved in the acquisition of the U.S. Massena Lines for which B&LE is seeking acquisition and operating authority is listed in section 1180.6(a)(1)(i) above, and in section 1180.6(a)(7)(vi) below (concerning property in the United States, generally between Woodard, NY and Fort Covington, NY, near the US/Canada border).

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

The property included in the transaction and located in the United States comprises the following, for a total of approximately 236.3 miles:

- CSX's St. Lawrence Subdivision between CSX milepost QM 3.0 at or near Woodard, NY, and CSX milepost QM 183.1 at or near Fort Covington, NY on the US/Canadian border, a distance of approximately 179.2 miles;
- CSX's Fulton Subdivision between CSX milepost QMF 7.2 at or near a connection to CSX's St. Lawrence Subdivision near Woodard, NY and QMF 37.95 at or near Fort Ontario, NY, a distance of approximately 31 miles²²;

²² CSX previously obtained approval from the Board for discontinuance of service on the Fulton Subdivision between CSX milepost QMF 37.10 and CSX milepost QMF 37.95. *CSX Transportation, Inc. – Discontinuance of Service Exemption – In Oswego County, NY*, Docket No. AB-55 (Sub-No. 731X) (STB served June 17, 2013). B&LE is purchasing that track in its discontinued state.

- CSX's Balmat Industrial Track between CSX milepost QMB 0 at or near a connection with CSX's St. Lawrence Subdivision near CSX milepost QM 107 and QMB 9, a distance of approximately 9 miles;
- CSX's Rooseveltown Industrial Track between CSX milepost QMR 63 at or near a connection with the St. Lawrence Subdivision at Helena, NY, and CSX milepost QMR 68 at or near Rooseveltown, NY, a distance of approximately 5 miles; and
- CSX's Carthage Branch between CSX milepost QMC 86.8 at or near a connection with CSX's St. Lawrence Subdivision near Philadelphia, NY, and CSX milepost QMC 74.7 at or near Regis, NY, a distance of approximately 12 miles and CSX's connection with MHW A.²³

(See Exhibit 2, PSA § 2.01(a)(1).) The CN System-CSX revenue interchange will be at Woodard, NY. However, there are not adequate facilities at that location for physically interchanging traffic, nor could such facilities easily be added. B&LE will therefore physically interchange traffic with CSX at CSX's Belle Isle Yard (near Solvay, NY) or CSX's Dewitt Yard (near Syracuse, NY), depending on the type and direction of traffic.²⁴ Exhibit 1-Map E shows the approximate location CSX's Dewitt Yard and CSX's Belle Isle Yard.

CN anticipates that B&LE's principal points of interchange with other carriers on the Massena Lines in the United States will be as follows after Closing:

- CN-MHWA at Carthage, NY;
- CN-NYOG at Norwood, NY; and

²³ The total approximate mileage of 236.3 is the sum of the mileages on the individual segments. Milepost numbers do not necessarily reflect exact mileage, and therefore the mileage of certain segments may be slightly different than the number calculated by subtracting milepost numbers.

²⁴ Interline manifest freight, intermodal traffic, and military trains moving between Fort Drum and points east of Syracuse will be physically interchanged between B&LE and CSX at CSX's Dewitt Yard. Unit trains originating or terminating on the Fulton Subdivision and military trains moving between Fort Drum and points west of Syracuse will be physically interchanged at CSX's Belle Isle Yard.

- CN-MSTR at Massena, NY.

The U.S. Massena Lines do not connect to the New York, Susquehanna and Western Railway or to the Finger Lakes Railway Corporation, and under the PSA, B&LE will not acquire access to and agrees not to seek access to those carriers or their successors or assigns.

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

No governmental financial assistance is involved in the Transaction.

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

No environmental data is required under 49 C.F.R. part 1105, because, as indicated by the Operating Plan (attached as Exhibit 15), the Transaction will not result in significant increase in carrier operations, and in particular will not lead to operational changes exceeding the Board's thresholds for environmental analysis (set forth in 49 C.F.R. § 1105.7(e)(4) and (5)). See 49 C.F.R. § 1105.6(c)(1).

The U.S. Massena Lines are located entirely in attainment areas for air quality under the Clean Air Act. In attainment areas, the thresholds for environmental analysis under the Board's rules are: (1) an increase in rail traffic of 8 trains per day or 100% per year (measured by gross-ton mileage); (2) an increase in yard activity of 100% (measured by carload activity); (3) an increase in vehicular traffic of 10% of the average daily traffic, or 50 vehicles per day, on any affected road segment; or (4) diversions from

rail to motor carriage of 1,000 rail carloads per year, or an average of 50 rail carloads per mile per year for any part of the affected line. 49 C.F.R. § 1105.7(e)(4)(iv), (5)(i).

As described in the Operating Plan, CN does not expect increases in numbers of trains or volumes of existing local and overhead traffic on the U.S. Massena Lines, as a result of the Transaction, in excess of the applicable Board's thresholds for environmental analysis. The Transaction is intended primarily to preserve service on the Massena Lines for existing traffic rather than divert traffic from other routes or generate new traffic. *See id.* § 1105.7(e)(5)(i)(A). As described in the Operating Plan, after the Transaction, due to anticipated more efficient operations, B&LE estimates that the number of trains will decrease between Fort Covington and Massena, NY. The number of trains on the other line segments is not expected to change because of the Transaction.

There are no Transaction-related abandonments or discontinuances of service or other actions that would divert rail traffic to motor carriage or otherwise increase truck traffic on any affected road segment. *See* 49 C.F.R. § 1105.7(e)(4)(iv), (5)(i)(C), (5)(ii)(C).

The Operating Plan anticipates no material changes in yard operations on the U.S. Massena Lines and thus does not project increases in yard activity exceeding the thresholds in 49 C.F.R. § 1105.7(e)(5)(i)(B) or § 1105.7(e)(5)(ii)(B). CN understands that CSX does not anticipate material changes in yard operations at CSX's Dewitt Yard near Syracuse or at CSX's Belle Isle Yard near Solvay as a result of the Transaction. CSX currently moves existing overhead traffic and local traffic via its Dewitt Yard and Belle Isle Yard. After the Transaction that traffic will continue to move via those two yards for interchange between B&LE and CSX.

As the Transaction would cause none of the Board's thresholds for environmental analysis to be exceeded, no environmental documentation (i.e., environmental assessment or environmental impact statement) is anticipated and thus no environmental reporting is required under 49 C.F.R. §1105.6(c)(1)(i).

Similarly, no historical reporting is required under 49 C.F.R. §1105.8, because the Transaction is "for the purpose of continued rail operations where further STB approval is required to abandon any service and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older." 49 C.F.R. §1105.8(b)(1).

1180.8. Operational Data

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

B&LE's Operating Plan (Exhibit 15 to this Application) describes how B&LE plans to operate the U.S. Massena Lines upon adding them to its system.

After the Transaction, the current CN System-CSX interchange on the Massena Lines at Huntingdon, Quebec will shift as follows: (a) all manifest freight, as well as military trains moving from or to points east of Syracuse, NY, will be interchanged at CSX's Dewitt Yard (near Syracuse, NY); and (b) unit trains currently moving to or from the Fulton Subdivision, and military trains moving from or to points west of Syracuse, will be interchanged at CSX's Belle Isle Yard (near Solvay, NY).²⁵ B&LE plans to maintain existing interchanges with MSTR at Massena, NYOG at Norwood, and MHWA at Carthage.

²⁵ B&LE will have operating rights on CSX's tracks beyond Woodard, NY to interchange traffic with CSX at CSX's Dewitt Yard and CSX's Belle Isle Yard. Those rights are solely for the purpose of effecting an efficient and effective interchange with CSX for the convenience of CSX and B&LE, because of the lack of adequate facilities to physically interchange traffic at

The Transaction is not expected to result in the diversion of traffic from other routes or the development of new traffic. CN expects that the Transaction will not result in increases in rail traffic, rail yard activity, or road traffic that would exceed the Board's thresholds for environmental analysis. As described in the Operating Plan, due to the elimination of transfer assignments after the Transaction, B&LE estimates that the overall number of trains between Fort Covington and Massena, NY will decrease by four trains per day. The number of trains on other line segments is not expected to significantly change due to the Transaction. Although the Transaction will shift the CN System-CSX interchange point, giving the CN System a longer haul for interline traffic with CSX, this shift in the interchange point is not expected to affect the number of trains on the U.S. Massena Lines.

B&LE will work with customers located on the U.S. Massena Lines to understand and identify their rail service needs, develop efficient plans to serve their facilities, and help them grow their future businesses.

Approximately {{[REDACTED]}} loaded cars of poison-by-inhalation hazardous materials ("PIH") traffic originating or terminating in Canada moved over the St. Lawrence Subdivision (the main line of the U.S. Massena Lines) between the U.S./Canada border and Syracuse in 2018. CSX previously installed positive train control ("PTC") on the St. Lawrence Subdivision. CSX has agreed to provide certain PTC transition services on the St. Lawrence Subdivision after the B&LE's acquisition of the U.S. Massena Lines. This will enable CSX's current PTC system to remain in place, consistent with FRA

Woodard, and the existence of sufficient facilities at CSX's Dewitt Yard and CSX's Belle Isle Yard for that purpose.

regulations, while CN evaluates the number of loaded PIH cars on the St. Lawrence Subdivision and engages with FRA regarding PTC on the St. Lawrence Subdivision given the unique circumstances of the line. CN plans to utilize CSX's PTC transition services until FRA determines whether the St. Lawrence Subdivision qualifies for a *de minimis* or other exception and the line segment is transferred from the CSX's PTC implementation plan to CN's PTC implementation plan. (See Ex. 15 (Operating Plan) at § II.B.)

CONCLUSION

B&LE respectfully requests that the Board accept the Application, determine that the Transaction described in it is a minor transaction, and grant this Application.

Respectfully submitted,

Sean Finn
Olivier Chouc
CN
935 de La Gauchetière Street West,
16th Floor
Montreal, Quebec H3B 2M9

Kathryn J. Gainey
CN
Suite 500, North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004
202-347-7840
Kathryn.Gainey@cn.ca

/s/ Claire M. Maddox

Claire M. Maddox
David A. Hirsh
James M. Guinivan
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
202-496-7500
claire.maddox@dentons.com

Attorneys for Bessemer and Lake Erie Railroad Company

October 10, 2019

SIGNATURE OF APPLICANT'S OFFICER
(SECTION 1180.4(c)(2)(i))

**BESSEMER AND LAKE ERIE RAILROAD COMPANY
AND GRAND TRUNK CORPORATION**

I, Mitch Beekman, declare under penalty of perjury that I am Vice-President, Safety and Environment of Bessemer and Lake Erie Railroad Company ("B&LE"), applicant herein, and of Grand Trunk Corporation ("GTC"), which controls B&LE. I am duly authorized to sign, to verify, and to file this Application on behalf of B&LE. The statements in this Application are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "mg Beekman", written over a horizontal line.

Mitch Beekman

Executed on October 10th, 2019

CERTIFICATION OF DEPUTY CORPORATE SECRETARY
(SECTION 1180.4(c)(2)(i))

I, Cristina Circelli, hereby certify that I am Vice-President, Deputy Corporate Secretary and General Counsel of Canadian National Railway Company, which indirectly controls Bessemer and Lake Erie Railroad Company ("B&LE") and Grand Trunk Corporation ("GTC"). I certify that Mitch Beekman, Vice-President, Safety and Environment of B&LE and GTC, is duly authorized to sign, to verify, and to file this Application on behalf of B&LE.


Cristina Circelli

Dated this 10 day of October, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of October 2019, caused the public version of the foregoing Application (BLE-1) in Docket No. FD 36347, *Bessemer and Lake Erie Railroad Company – Acquisition and Operation – Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, New York*, including all exhibits, appendices, and other attachments thereto, to be served upon the following parties by the means indicated:

By Hand Delivery:

The Honorable William P. Barr
Office of the Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

By First-Class Mail:

The Honorable Andrew Cuomo
Office of the Governor
State of New York
State Street and Washington Avenue
Albany, NY 12224

By E-mail:

The Honorable Elaine L. Chao
Secretary of Transportation
Office of the Secretary
United States Department of Transportation
1200 New Jersey Ave., SE, 9th Floor
Washington, DC 20590
elaine.l.chao@dot.gov

The Honorable John B. Howard
Commissioner
Public Service Commission
State of New York
Three Empire State Plaza
Albany, NY 12223
john.howard@dps.ny.gov

The Honorable Marie Therese Dominguez
Commissioner
New York State Department of Transportation
Officer of the Governor
State of New York
50 Wolf Road
Albany, NY 12232
marie.dominguez@dot.ny.gov

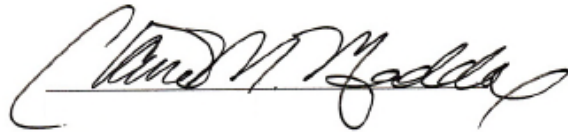
The Honorable Joseph J. Simons
Office of the Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
secretary@ftc.gov

/s/ James M. Guinivan

APPENDIX 1

OPINION OF COUNSEL FOR APPLICANT

As counsel for Bessemer and Lake Erie Railroad Company (“B&LE”), applicant herein, I have reviewed the foregoing Application and am generally familiar with the transaction proposed therein. It is my opinion that the proposed transaction meets the requirements of the law, is within the corporate powers of B&LE, and will be legally authorized and valid, if approved by the Surface Transportation Board.

A handwritten signature in black ink, appearing to read "Claire M. Maddox", written over a horizontal line.

Claire M. Maddox
Partner
Dentons US LLP

Dated this 10th day of October 2019, at Washington, D.C.

EXHIBIT 1

Maps

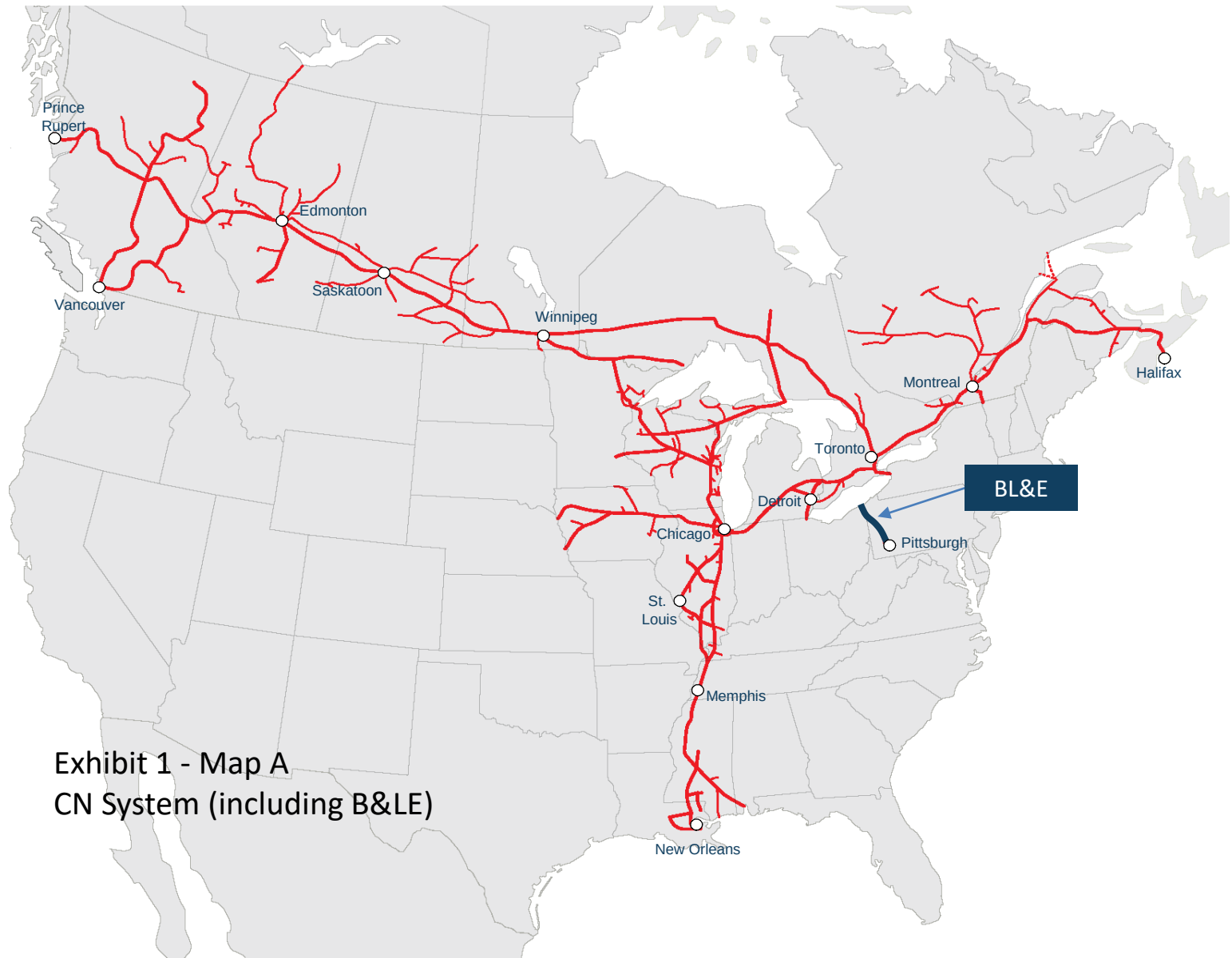
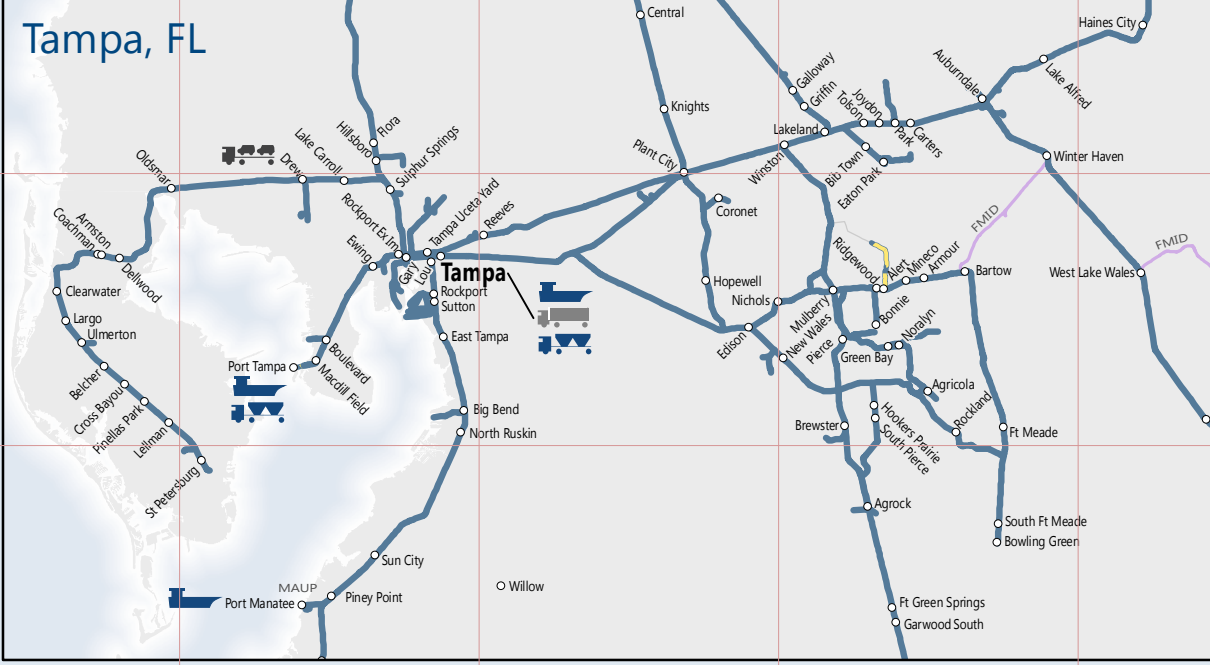
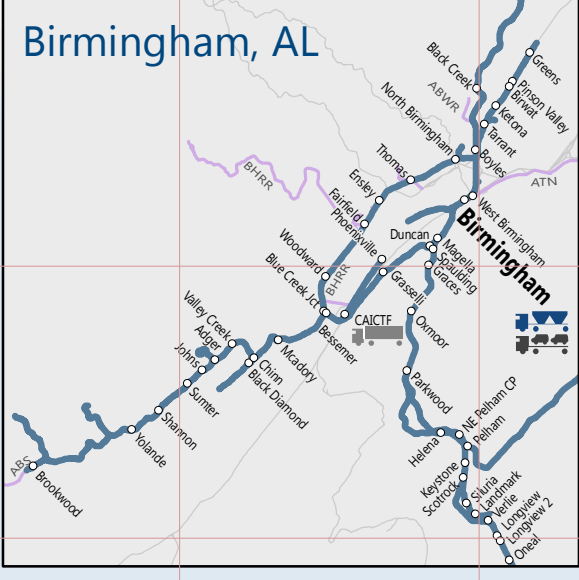
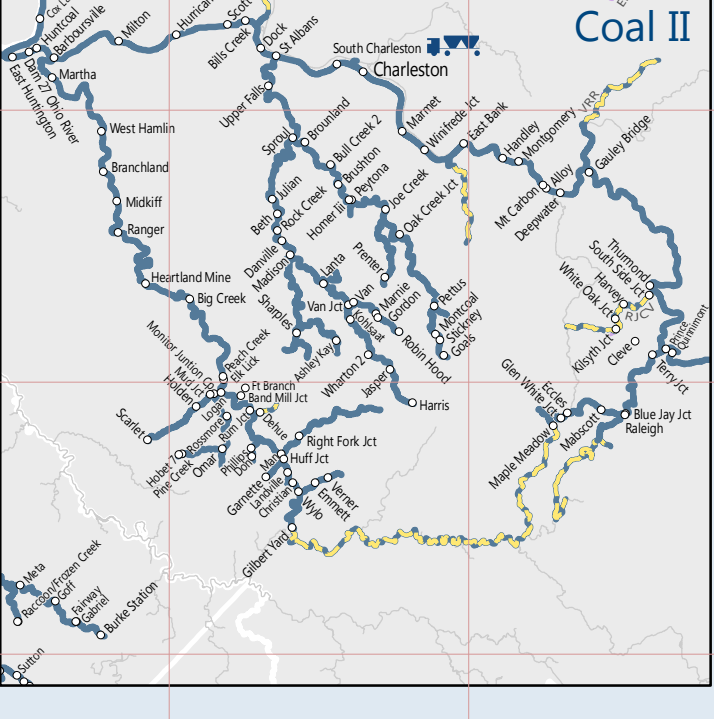
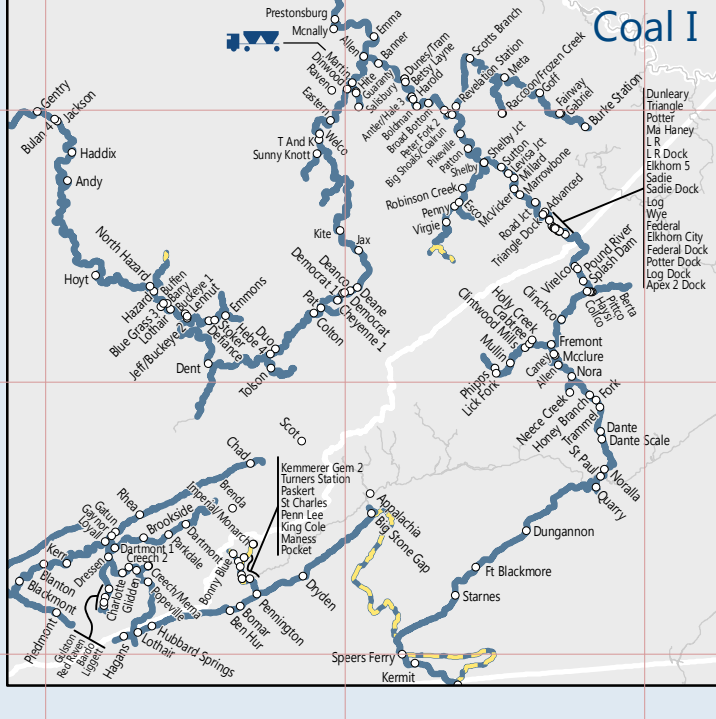
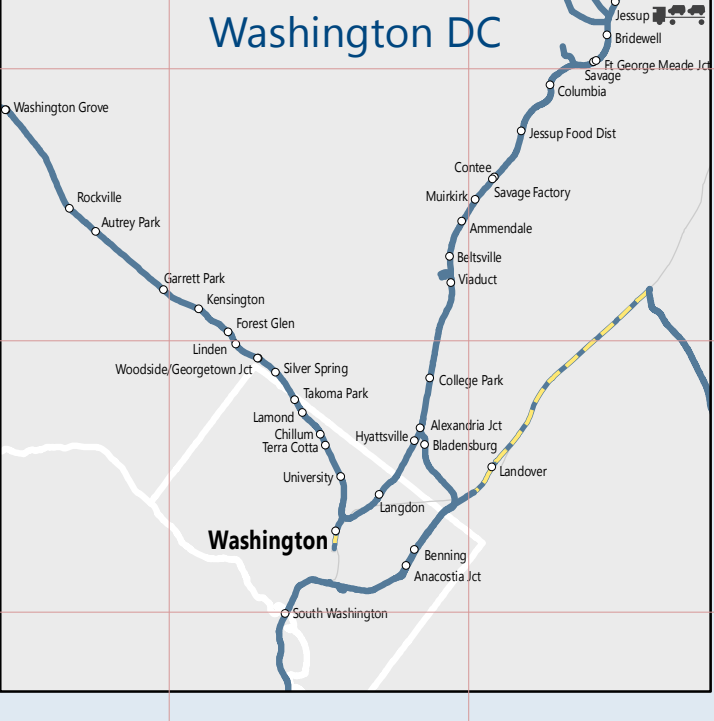
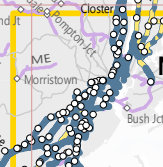
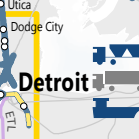
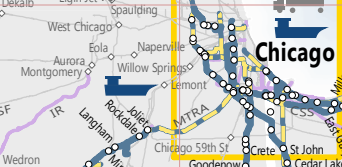


Exhibit 1 - Map A
CN System (including B&LE)



System Stations

	CSX Rail Service		CSX Station
	CSX Operating Agreement		Other Station
	Short Line Partner/Regional Connection		Other Rail
	TDSI Auto Distribution Terminal		Ocean/Inland Port
	CSX TRANSFLO Bulk Transfer Terminal		CSX Intermodal Terminal

050100 Miles

075150 Kilometers

Exhibit 1-Map C

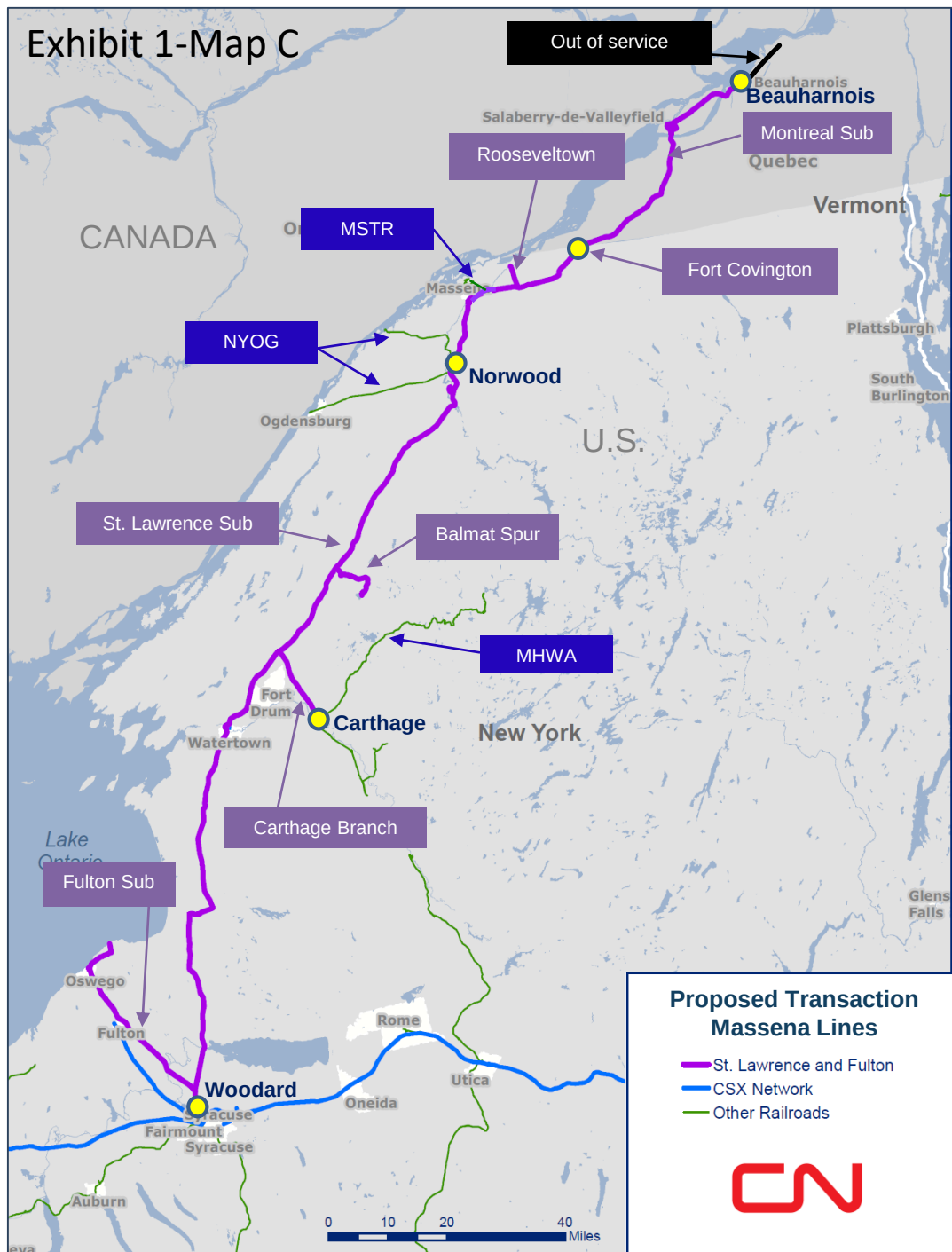
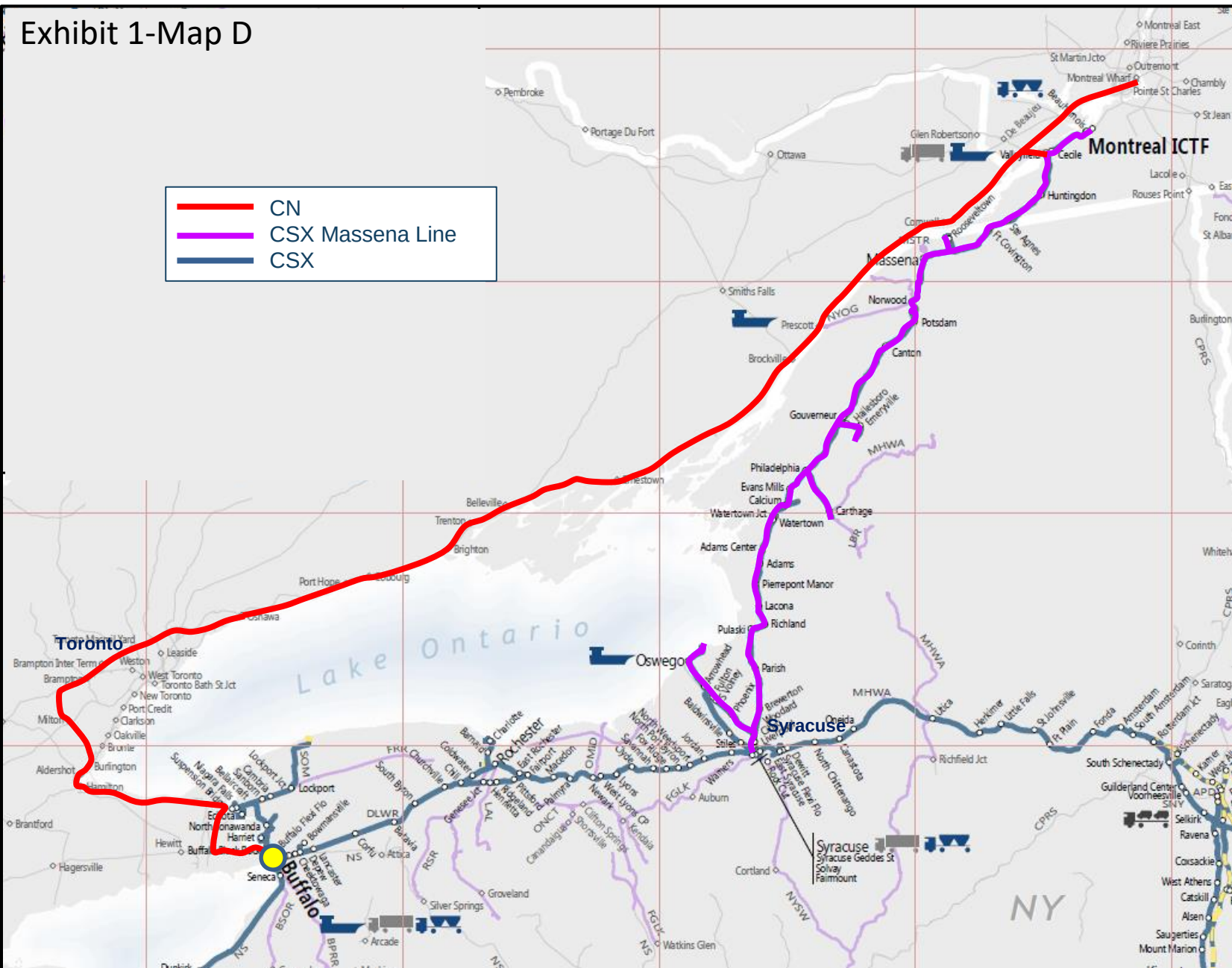


Exhibit 1-Map D

Map D illustrates the rail network connecting Buffalo, NY, to Montreal, QC. The network is primarily composed of three main lines:

- CN (Red Line):** This line runs from Buffalo, NY, through Toronto, Ontario, and then through the St. Lawrence Valley to Montreal, QC. Key stations along this route include Buffalo, Toronto, and Montreal.
- CSX Massena Line (Purple Line):** This line runs from Buffalo, NY, through the Massena area and then to Montreal, QC. Key stations along this route include Buffalo, Massena, and Montreal.
- CSX (Blue Line):** This line runs from Buffalo, NY, through the Adirondack region and then to Montreal, QC. Key stations along this route include Buffalo, Adirondack, and Montreal.

The map also shows various other rail lines and stations in the region, including the Montreal ICTF and the Montreal Wharf. The map is a detailed representation of the rail network, showing the routes and stations for each line.



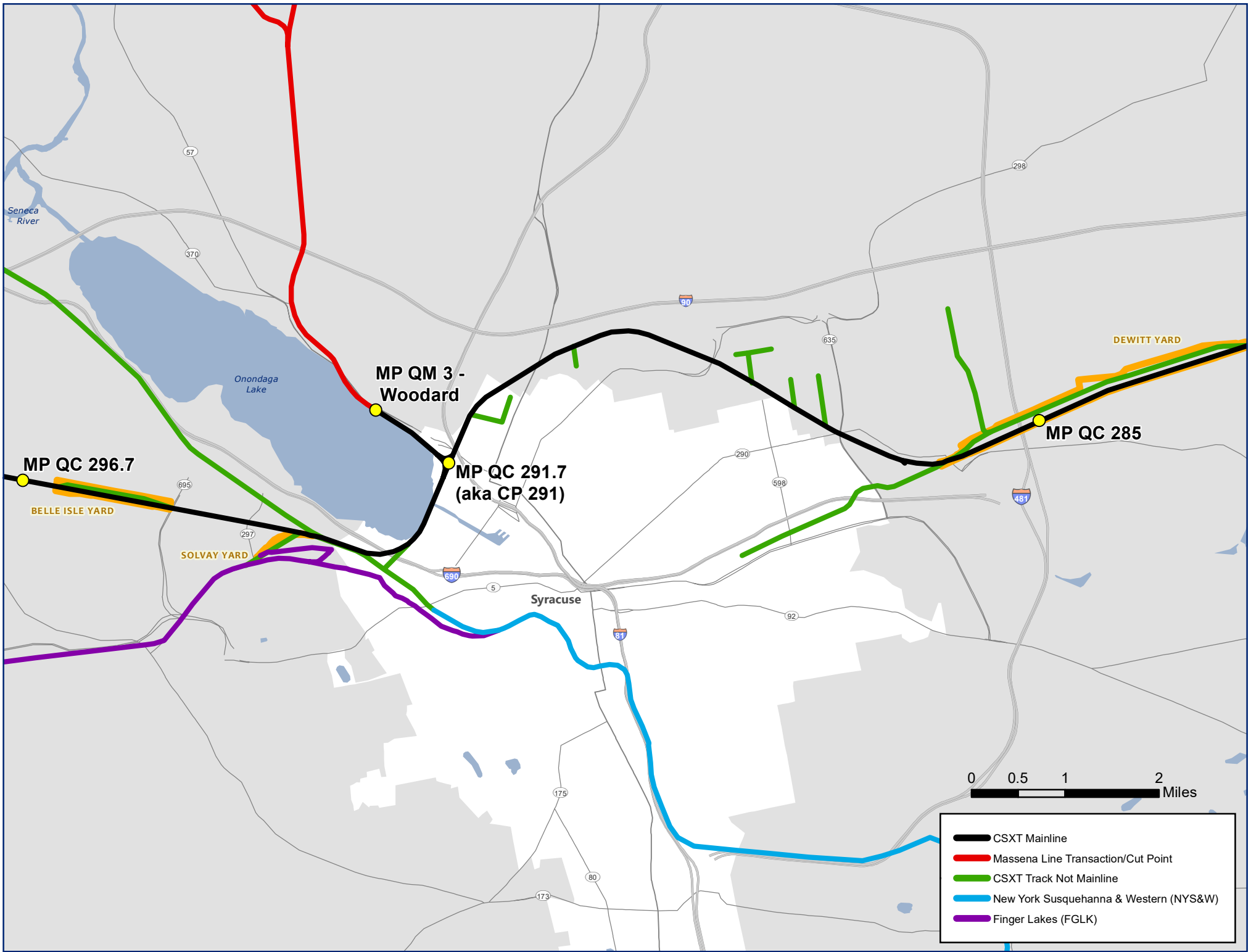


EXHIBIT 2
Agreement
(Public-Redacted)

PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS	1
1.01 DEFINED TERMS	1
1.02 OTHER DEFINITIONAL PROVISIONS AND RULES OF CONSTRUCTIONS	12
1.03 SCHEDULES AND EXHIBITS	13
ARTICLE II. SALE AND PURCHASE OF ACQUIRED ASSETS;	13
2.01 SALE AND PURCHASE OF ACQUIRED ASSETS	13
2.02 EXCLUDED ASSETS	17
2.03 PURCHASE PRICE	17
2.04 REAL ESTATE TAXES	19
2.05 ALLOCATION OF PURCHASE PRICE.....	19
2.06 SECTION 116 WITHHOLDING.....	20
2.07 SECTION 1097 WITHHOLDING.....	21
ARTICLE III. CLOSING	22
3.01 CLOSING DATE AND PLACE	22
3.02 DELIVERIES BY SELLER	23
3.03 DELIVERIES BY BUYER	23
3.04 THIRD-PARTY AGREEMENTS	24
ARTICLE IV. ACCESS TO INFORMATION; CERTAIN RESTRICTIONS	24
4.01 BUYER’S INVESTIGATION.....	24
4.02 CONFIDENTIALITY OF INFORMATION	25
4.03 POST-SIGNING DUE DILIGENCE AND RIGHT TO TERMINATE	25
ARTICLE V. ADDITIONAL UNDERTAKINGS AND AGREEMENTS	25
5.01 REMOVAL OF EXCLUDED ASSETS; PROPRIETARY LOCKS; EMERGENCY INFORMATION	25
5.02 POST-CLOSING ACCESS TO CERTAIN RECORDS	26
5.03 EMPLOYEE RIGHTS	26
5.04 EMPLOYEE HIRING AND TRANSFER RIGHTS.....	26
5.05 RESTRICTIONS ON FUTURE USE	27
5.06 LABOR PROTECTION	27
5.07 CONDITION OF PROPERTY	28
5.08 TRADEMARKS AND LOGOS.....	29

5.09	TAX MATTERS	29
5.10	POSITIVE TRAIN CONTROL.....	31
5.11	FIBER OPTIC CABLE.....	32
5.12	VALLEYFIELD TERMINAL.....	32
5.13	LEASE TERMINATION.....	32
5.14	POST-CLOSING OPERATIONS.....	32
5.15	COMPETITION ACT APPROVAL.....	33
5.16	CTA APPROVAL	34
5.17	RADIO COMMUNICATIONS	36
5.18	SPECIAL ENVIRONMENTAL LIABILITY WORK	36
ARTICLE VI. SELLER’S REPRESENTATIONS AND WARRANTIES		36
6.01	ORGANIZATION AND AUTHORITY	37
6.02	NO CONFLICTS; CONSENTS OF THIRD PARTIES	37
6.03	LICENSES AND PERMITS	38
6.04	LITIGATION.....	38
6.05	TITLE TO ACQUIRED ASSETS.....	38
6.06	LIST OF AGREEMENTS.....	38
6.07	STATUS OF AGREEMENTS	39
6.08	TAXES AND ASSESSMENTS.....	39
6.09	[RESERVED]	39
6.10	LEGAL COMPLIANCE.....	39
6.11	[RESERVED]	40
6.12	CANADIAN TAXES	40
6.13	CANADIAN EMPLOYEES	40
ARTICLE VII. BUYER’S REPRESENTATIONS AND WARRANTIES		40
7.01	ORGANIZATION AND AUTHORITY	40
7.02	NO CONFLICTS; CONSENTS OF THIRD PARTIES	41
7.03	LITIGATION.....	41
7.04	INFORMATION PROVIDED.....	41
7.05	FINANCIAL RESOURCES	42
7.06	CONTINUED OPERATION	42
ARTICLE VIII. PRECLOSING COVENANTS.....		42
8.01	NEGATIVE COVENANTS	42

8.02	AFFIRMATIVE COVENANTS	42
8.03	AMENDED SCHEDULES	43
8.04	OTHER PREPARATION	43
ARTICLE IX. CONDITIONS PRECEDENT TO BUYER’S OBLIGATION TO CLOSE.....		44
9.01	REPRESENTATIONS AND WARRANTIES	44
9.02	STB CONDITIONS	44
9.03	DOCUMENTS AT CLOSING	44
9.04	NO GOVERNMENTAL ACTION OR LEGAL PROCEEDINGS	44
9.05	COMPETITION ACT APPROVAL.....	44
9.06	CTA APPROVAL	44
9.07	SCHEDULE UPDATES.....	44
ARTICLE X. CONDITIONS PRECEDENT TO SELLER’S OBLIGATION TO CLOSE		45
10.01	REPRESENTATIONS AND WARRANTIES	45
10.02	STB CONDITIONS	45
10.03	DOCUMENTS AT CLOSING	45
10.04	NO GOVERNMENTAL ACTION OR LEGAL PROCEEDINGS	45
10.05	COMPETITION ACT APPROVAL.....	45
10.06	CTA APPROVAL	45
ARTICLE XI. RISK OF LOSS; TERMINATION.....		46
11.01	RISK OF LOSS	46
11.02	TERMINATION	46
11.03	EFFECT OF TERMINATION	46
ARTICLE XII. SURVIVAL; INDEMNIFICATION.....		46
12.01	SURVIVAL OF WARRANTIES; LIMITATIONS; EXCLUSIVE REMEDY	46
12.02	INDEMNIFICATION BY SELLER.....	48
12.03	INDEMNIFICATION BY BUYER	48
12.04	CONDITIONS OF INDEMNIFICATION	49
12.05	OTHER INDEMNITY MATTERS	50
ARTICLE XIII. MISCELLANEOUS		50
13.01	CONSENTS AND FILINGS	50
13.02	ADDITIONAL ACTIONS AND DOCUMENTS	51
13.03	BROKERS	51
13.04	EXPENSES	52

13.05	WAIVER	52
13.06	SUCCESSORS AND ASSIGNS	52
13.07	ASSIGNMENT	52
13.08	NOTICES	52
13.09	ANNOUNCEMENTS	53
13.10	ENTIRE AGREEMENT	54
13.11	HEADINGS.....	54
13.12	CONFLICTING TERMS	54
13.13	LIMITATION ON BENEFITS	54
13.14	SEVERABILITY	54
13.15	EXECUTION.....	54
13.16	DISPUTE RESOLUTION, GOVERNING LAW- JURISDICTION	55
13.17	LANGUAGE	56
13.18	SPECIFIC PERFORMANCE.....	56

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, dated as of the 29th day of August, 2019 (the “**Execution Date**”), between Canadian National Railway Company, a Canadian corporation (“**CNR**” or “**Canadian Buyer**”) and Bessemer and Lake Erie Railroad Company, a Delaware corporation (“**US Buyer**” and together with Canadian Buyer, “**Buyer**”), and CSX Transportation, Inc., a Virginia corporation (“**CSX**”) and CSX Intermodal Terminals, Inc., a Delaware corporation (“**CSXIT**”), and St. Lawrence and Adirondack Railway Company, a Canadian corporation (“**SLA**” and collectively with CSX and CSXIT, “**Seller**”). Seller and Buyer are herein referred to collectively as the “**Parties**” and may be referred to individually as a “**Party**”.

RECITALS:

A. CSX, directly or through an entity comprising Seller (collectively, in such capacity, the “**US Seller**”), desires to sell to US Buyer, and US Buyer is willing to acquire the US Acquired Assets (as defined below).

B. CSX, directly or through an entity comprising Seller (collectively, in such capacity, the “**Canadian Seller**”), desires to sell to Canadian Buyer, and Canadian Buyer is willing to acquire the Canadian Acquired Assets (as defined below).

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

ARTICLE I. DEFINITIONS

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

“**Acquired Assets**” – The US Acquired Assets and the Canadian Acquired Assets, collectively.

“**Affiliates**” – With respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; *provided* that, for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities (including common stock, partnership interests, membership interests or other ownership interests), by contract or otherwise.

“**Agreement**” – This Purchase and Sale Agreement as the same may be amended or supplemented from time to time in accordance with the terms hereof.

“**Applicable Terminated CN Employee**” - As defined in Section 5.04(b).

“Arbitration Notice” - As defined in Section 13.16(c).

“ARC” - An advance ruling certificate issued by the Commissioner pursuant to subsection 102(l) of the Competition Act with respect to the transactions contemplated by this Agreement.

“Assignment and Assumption Agreement” – The assignment and assumption agreement substantially in the form attached as Exhibit A.

“Assumed Obligations” – As defined in Section 2.03(b)(ii).

“Beauharnois - Valleyfield Line” - The existing CSX line between Beauharnois, Quebec and Valleyfield, Quebec.

“Buyer” - As defined in the Preamble.

“CA Notification” - As defined in Section 5.15(c).

“Canadian Acquired Assets” - As defined in Section 2.01(b).

“Canadian Assumed Obligations” - As defined in Section 2.03(b)(ii).

“Canadian Buyer” - As defined in the Preamble.

“Canadian Employee” – Any unionized or non-unionized individual employed by the Seller in Canada whose employment relates to the Canadian Acquired Assets, but excluding Seller’s manager of Canadian operations based in Sarnia, Ontario.

“Canadian Lines” - As defined in Section 2.01(b)(i).

“Canadian Lines Agreements” - As defined in Section 2.01(b)(iv).

“Canadian Permits” - As defined in Section 2.01(b)(v).

“Canadian Purchase Price” - As defined in Section 2.03(a)(ii).

“Canadian Rail Assets” - As defined in Section 2.01(b)(i).

“Canadian Real Property” - As defined in Section 2.01(b)(i).

“Carload Haulage Agreement” - The Carload Haulage Agreement in a form reasonably agreed to by the Parties.

“Chateauguay Liabilities” - As defined in Section 5.14(d).

“Chateauguay Segment” - As defined in Section 2.01(b)(iii).

“Claimant” - As defined in Section 13.16(c).

“Claims” - As defined in Section 12.02.

“Closing” - As defined in Section 3.01.

“Closing Date” - As defined in Section 3.01.

“CN Employee” - As defined in Section 5.04(b).

“Code” – The Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and the rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement.

“Collective Agreement” - Any collective agreement, letter of understanding, letter of intent or other written communication with any labor union or employee association that governs the terms and conditions of employment of any Employees and imposes obligations on the Seller.

“Comfort Letter” - As defined in Section 2.06(c).

“Commissioner” - The Commissioner of Competition appointed under the Competition Act or any Person authorized to exercise the powers and perform the duties of the Commissioner.

“Competition Act” - The *Competition Act*, R.S.C., 1985.c. C-34, as amended and the regulations thereunder.

“Competition Act Approval” - One of the following has occurred in respect of the transactions contemplated in this Agreement: (a) the Commissioner shall have issued an ARC on conditions satisfactory to the Parties, acting reasonably, and such ARC remains in force and effect at the time of Closing; or (b)(i) the Parties have given the notification under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the applicable waiting period under section 123 of the Competition Act shall have expired or been terminated or the notification requirement shall have been waived pursuant to paragraph 113(c) of the Competition Act and (ii) the Commissioner shall have issued a No-Action Letter on terms and conditions satisfactory to the Parties, acting reasonably, and such No-Action Letter remains in force and effect at the time of Closing.

“Competition Tribunal” - The Competition Tribunal as established under the *Competition Tribunal Act*, R.S.C. 1985.c. 19 (2nd Supp.), as amended.

“Confidentiality Agreement” – The Nondisclosure Agreement dated June 12, 2018, executed between CSX and Canadian Buyer regarding the transaction contemplated herein, which shall remain in full force and effect as the same is in effect from time to time.

“Contracts” - Contracts, agreements, easements, franchises, rights-of-way, licenses, leases, commitments, arrangements and understandings.

“CRA” – The Canada Revenue Agency.

“CSX” – As defined in the Preamble.

“CSXIT” – As defined in the Preamble.

“CTA” - The *Canada Transportation Act*, S.C. 1996, c. 10, as amended.

“CTA Approval” - The Canadian Buyer and the Canadian Seller shall have received a notice from the Canadian Minister of Transport, as provided for under subsection 53.1(4) of the CTA, advising that such transactions do not raise issues with respect to the public interest as it relates to national transportation; or (ii) the Governor in Council shall have approved such transactions pursuant to subsection 53.2(7) of the CTA.

“Decision” - The Decision entered by the STB approving or exempting the various transactions contemplated by this Agreement; *provided, however*, that if more than one decision is issued in connection with such contemplated transactions, all such decisions shall for purposes of this Agreement, unless otherwise indicated, be referred to collectively as the **“Decision.”**

“Deeds” -

- (i) With respect to the US Real Property: Quitclaim deeds in a form reasonably agreed to by the Parties.
- (ii) With respect to the Canadian Real Property: Deeds of Sale in a form reasonably agreed to by the Parties.

“Dispute” - As defined in Section 13.16.

“Drop Dead Date” – November 30, 2020.

“Effective Time” – 12:01 a.m. New York, New York time the day after the Closing Date.

“Encumbrances” – Any lien, pledge, security interest, hypothec, restrictive covenant, easement, mortgage, title retention agreement, charge, assignment, option, conditional sale, warrant, indenture, deed of trust, right of way, restriction on the use of real property, encroachment, encumbrance, license to third parties, right of first refusal, lease or sublease to third parties, security agreement, adverse claim or other encumbrance of any kind, which secures payment or performance of an obligation or otherwise affects the right, title or interest in or to any particular property (whether arising by contract or operation of law).

“Environmental Examination” - As defined in Section 4.01(b).

“Environmental Examination Period” - As defined in Section 4.01(b).

“Environmental Laws” -

- (i) With respect to the US Acquired Assets, shall mean: any federal, state, local or common law, rule, regulation, ordinance, code, order, decree, judgment, permit requirement, or

other requirement of any Governmental Authority, in effect as of the date of this Agreement or at any time thereafter, relating to (i) the pollution or protection of the environment (including air, land, soil, surface waters, ground waters, stream and river sediments, and biota); or (ii) the use, generation, storage, treatment, disposal, processing, transportation (except for transportation as a common carrier), handling, release, emission or remediation of Hazardous Substances, including the Comprehensive Environmental Response, Compensation, and Liability Act (“**Superfund**” or “**CERCLA**”), 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act (“**Solid Waste Disposal Act**” or “**RCRA**”), 42 U.S.C. §§ 6901 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 330f et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., and the Toxic Substances Control Act (“**TSCA**”), 15 U.S.C. §§ 2601 et seq.

- (ii) With respect to the Canadian Acquired Assets, shall mean: Laws relating to (i) the pollution or protection of the Environment; or (ii) the use, generation, storage, treatment, disposal, processing, transportation (except for transportation as a common carrier), handling, release, emission or remediation of Hazardous Substances. In the context of this definition, “**Environment**” shall mean the environment or natural environment as defined in any Environmental Law and includes soil, air, surface water, ground water, land surface, and subsurface strata.

“**Environmental Liabilities**” - Claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities, Encumbrances, violations, costs and expenses (including attorneys’, consultants’ and engineering fees) of or arising from investigation, remediation, clean-up, corrective action, monitoring, compliance or defense of any matter arising under any Environmental Laws (whether at law or in equity) or in any way relating to (i) the environment (including air, land, soil, surface waters, ground waters, stream and river sediments, and biota); (ii) the use, generation, storage, treatment, disposal, processing, transportation (except for transportation as a common carrier), handling, release, emission or remediation of Hazardous Substances; or (iii) impacts on human health and safety resulting from the foregoing, of whatever kind or nature, whether or not resulting from the actual or alleged violation of or noncompliance with any Environmental Laws.

“**ERISA**” - The Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations issued thereunder.

“**ERISA Affiliate**” - Any subsidiary or any trade or business (whether or not incorporated) under common control (as defined in Section 4001(b)(1) of ERISA) with the Party in question.

“**Escrow Agent**” - means a commercial bank, as reasonably agreed between the Parties.

“**Excluded Assets**” - all assets of Seller not expressly included in the Acquired Assets pursuant to Section 2.01(a) and (b), and the following:

- (i) CSX owned or leased rolling stock, locomotives, trackmobiles, rear-end warning devices, automobiles, trucks, automotive equipment, machinery, office and computer equipment, mobile radios, furniture, tools, fuel cells, inventories, materials and supplies, located on the Lines as of the Closing Date,
- (ii) all existing third party fiber optic cable and longitudinal occupancies on the Real Property and all fees associated therewith (subject to Section 5.11 below);
- (iii) the cranes and other auxiliary equipment at the Valleyfield Terminal (the “**Valleyfield Equipment**”); and
- (iv) the communications equipment set forth in Schedule 2.02.

“**Excluded Obligations**” - As defined in Section 2.03(c).

“**Execution Date**” as defined in the Preamble.

“**FCC**” - The United States Federal Communications Commission.

“**FCC Approval**” - As defined in Section 5.17(a).

“**FCC Licenses**” - As defined in Section 5.17(a).

“**FGLK**” - As defined in Section 5.14(b).

“**Fiber Optic Agreement**” - An agreement regarding certain fiber optic related rights and obligations in a form reasonably agreed to by the Parties.

“**Fiber Optic Liabilities**” - As defined in Section 5.11.

“**FRA**” - As defined in Section 5.10(c).

“**Freight Operating Agreement**” - The Freight Operating Agreement in a form reasonably agreed to by the Parties.

“**Governmental Authority**” - Any instrumentality, subdivision, court, executive department, administrative agency, commission, official or other authority of the United States, Canada or any other country or any state, province, prefect, municipality, locality or other government or political subdivision thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority.

“**GST/HST Legislation**” – Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder.

“**Hazardous Substances**” –

- (i) with respect to the US Acquired Assets, shall mean all hazardous or toxic materials, substances, wastes, pollutants, contaminants, constituents or solid wastes, or terms of similar meaning, subject to regulation or defined under any Environmental Law.
- (ii) with respect to the Canadian Acquired Assets, shall mean any waste, chemical, material or other substance that is regulated, prohibited, listed, defined, designated or classified under any applicable Environmental Laws, including as hazardous, radioactive or toxic or a pollutant or a contaminant, including petroleum and all derivatives thereof, asbestos or asbestos-containing materials in any form or condition, and polychlorinated biphenyls.

“Indemnified Party” - As defined in Section 12.04(a).

“Indemnifying Party” - As defined in Section 12.04(a).

“Independent Accountant” - means an accounting firm of national reputation which has not served as either Party’s auditor during the last three (3) years, as reasonably agreed between the Parties.

“Interchange Agreement” – The Interchange Agreement in a form reasonably agreed to by the Parties.

“Knowledge,” “knowledge,” “know” and the like - With respect to Seller, all references herein to knowledge or know, shall mean the actual knowledge, after reasonable inquiry of direct reports, in the case of environmental matters, of Coley Campbell, Manager, Environmental Services, CSX Transportation, Inc., in the case of Lines Agreements, Permits and Prohibited Encumbrances, William Braman, Director, Real Estate, CSX Transportation, Inc., and in the case of compliance with law and litigation, Michael S. Burns, Esq., Vice President, General Counsel, CSX Transportation, Inc.

“Labor Protection” - Any payments to, or on behalf of, On-Line Employees or employees of Seller adversely affected by decisions of On-Line Employees related to the transaction, who are adversely affected as a result of the transaction contemplated by this Agreement, including wage payments and the cost of employee health care and retirement benefits incurred by reason of protective conditions imposed by a Governmental Authority, a Collective Agreement or any agreement entered into with such On-Line Employees or displaced employees of Seller or their collective bargaining representatives.

“Law” - Any and all applicable (i) laws, statutes, rules, regulations, by-laws, codes, treaties, constitutions and ordinances, (ii) orders, directives, judgments, decrees, awards or writs of any Governmental Authority, and (iii) policies, guidelines, standards, requirements, notices and protocols of any Governmental Authority, to the extent that they have the force of law.

“Lines” - Collectively, the US Lines and Canadian Lines.

“Lines Agreements” - Collectively, the US Lines Agreements and the Canadian Lines Agreements.

“Massey Yard Resolution” means the New York State Department of Environmental Conservation’s issuance of either (i) a letter indicating the Massey Yard site will be in “inactive” status or (ii) a “no further remedial actions are necessary” letter.

“Material Adverse Effect” - A material adverse effect on the ownership, use or operation of the Acquired Assets in substantially the same manner as the Acquired Assets were owned, used or operated by Seller prior to the Closing Date; *provided, however*, that any such effect that results from (i) any action permitted, required or contemplated by this Agreement (other than by Section 13.02), (ii) any failure to meet projections and forecasts, or (iii) changes, events or occurrences arising from general business conditions or affecting the rail industry generally shall not be a Material Adverse Effect.

“Material Governmental Condition” - A condition or obligation, or a combination of one or more conditions or obligations, attached to or included in the Decision or otherwise imposed by a Governmental Authority which would be reasonably expected in the aggregate to materially reduce the value of the transactions contemplated by this Agreement for Buyer or Seller or both. The conditions and obligations referred to above include only those conditions and obligations that are imposed as part of the approval or exemption of the various transactions contemplated by this Agreement and exclude conditions and obligations imposed independent of those transactions and/or after Closing.

“MHWA” - As defined in Section 2.01(a)(i)(5).

“MSTR” - As defined in Section 5.14(a).

“NYOG” – As defined in Section 5.14(a).

“NYSW” – As defined in Section 5.14(b).

“No-Action Letter” - A communication in writing from the Commissioner advising that he does not, at that time, intend to make an application to the Competition Tribunal under section 92 of the Competition Act in respect of the transactions contemplated in this Agreement.

“On-Line Employees” - Those employees of Seller working on the Lines or whose employment is impacted by Buyer acquiring the line on the Closing Date. For the avoidance of doubt, under no circumstances shall the On-Line Employees include any employees of Seller working at the Valleyfield Intermodal Terminal.

“Operative Documents” - This Agreement, the Freight Operating Agreement, the Interchange Agreement(s), the Assignment and Assumption Agreement, the Fiber Optic Agreement, the Transition Agreement, the Carload Haulage Agreement, the PTC Transition Agreement, any Right of Entry Agreement, the Quitclaim Bill of Sale, all required affidavits and state transfer forms delivered at Closing, and the certificates in the forms reasonably agreed to by the Parties.

“Party” – Each Buyer, on the one hand, and each Seller, on the other hand.

“Parties” – Collectively, Buyer and Seller.

“Permits” – Collectively, the US Permits and Canadian Permits.

“Permitted Use Period” - The six-month period following the Closing Date.

“Person” means and includes an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an unincorporated organization and a Governmental Authority.

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

“Post-Closing Employment Obligations” - As defined in Section 5.04(b).

“Proceeding” - Any suit, action (including regulatory action) or proceeding whether judicial or otherwise (including arbitration and any other alternative dispute resolution procedure).

“Prohibited Encumbrances” means, with respect to the properties, assets and operations of the Lines, Encumbrances that, individually or in the aggregate, materially interfere with the use of the Acquired Assets for railroad purposes as they are currently used.

“PTC” - As defined in Section 5.10(a).

“PTCIP” - As defined in Section 5.10(c).

“PTC Request” - As defined in Section 5.10(c).

“PTC Transition Agreement” – As defined in Section 5.10(c).

“Purchase Price” - The US Purchase Price plus the Canadian Purchase Price for a total of [REDACTED].

“QST Legislation” – Title I of the *Quebec Sales Tax Act* (Quebec) and the regulations made thereunder.

“QTA” – The *Taxation Act* (Quebec) and the *Regulation respecting the Taxation Act* (Quebec) in each case as amended to the date of this Agreement.

“Quebec Comfort Letter” - As defined in Section 2.07(c).

“Quebec Withheld Amount” - As defined in Section 2.07(a).

“Quitclaim Bill of Sale” - The Quitclaim Bill of Sale in a form reasonably agreed to by the Parties.

“Rail Assets” - As defined in Section 2.01(b)(i).

“Real Property” - The real property, including such title to the Lines as may be held by Seller, together with all rights, privileges, members, licenses and easements appurtenant to the real property now or hereafter existing, described on Exhibit B, comprising, collectively, the US Real Property and the Canadian Real Property.

“Related Persons” - With respect to a Party or its Affiliates, any current and former employees, agents, officers, directors, managers, subsidiaries, shareholders, owners, members, partners, insurers, attorneys, predecessors, successors and assigns.

“Release” - Any release or discharge of any Hazardous Substance, including any burial, incineration, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leaching, migration, dispersal, dispensing or disposal.

“Respondent” - As defined in Section 13.16(c).

“Right of Entry Agreement” - The right of entry agreement in a form reasonably agreed to by the Parties.

“Sales Tax” - As defined in Section 5.09(c).

“Seller” - As defined in the Preamble.

“Shared CN Employee Costs” - As defined in Section 5.04(b).

“Shared Employee Costs” - As defined in Section 5.06(b).

“Shared Employee Costs Cap” - As defined in Section 5.06(b).

“SLA” - As defined in the Preamble.

“Special Environmental Liabilities” - Any Claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities, Encumbrances, violations, costs and expenses (including attorneys’, consultants’ and engineering fees) of or arising from investigation, remediation, clean-up, corrective action, monitoring, compliance or defense in any way relating to New York State Department of Environmental Conservation (NYSDEC) Spill Number 1510624 at Massey Yard in Watertown, NY until the Massey Yard Resolution has been achieved. Special Environmental Liabilities do not include any exacerbation of any Special Environmental Liability to the extent due to Buyer’s acts or omissions at Massey Yard after Closing.

“Special Environmental Liability Work” – as defined in Section 5.18.

“STB” - The United States Surface Transportation Board, and any successor board, agency or other Governmental or Regulatory Authority.

“Tax” or “Taxes” -

- (i) With respect to the US Acquired Assets, shall mean: all federal, state, local, foreign and other taxes, customs, duties, transfer taxes and duties, fees, levies, assessments or charges of any kind whatsoever, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, real or personal property, business, documentary, registration, filing, recordation, unemployment, worker's compensation, commercial rent, premium, windfall profits, deemed profits, lease, capital, production, corporation, value added, bulk sale or other taxes, customs, duties, fees, levies, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority (domestic or foreign) regardless of whether disputed or whether related to the filing of a Tax Return (or the failure to file a Tax Return).
- (ii) With respect to the Canadian Acquired Assets, shall mean: all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority, including, Canadian federal, provincial, territorial, municipal and local, foreign or other income, capital gains, goods and services, sales, use, consumption, excise, value-added, business, real property, personal property, transfer, franchise, withholding, payroll and employee withholding, or employer health taxes, customs, import, anti-dumping or countervailing duties, Canada Pension Plan contributions, provincial pension plan contributions or premiums, employment insurance premiums, Quebec Parental Insurance Plan contributions, and provincial workers' compensation payments, including any interest, penalties and fines associated therewith, and any liability for any of the foregoing as a transferee, successor, guarantor or surety or in a similar capacity under any contract, agreement, commitment or arrangement, written or oral, or by operation of law.

"Tax Act" - The *Income Tax Act* (Canada), the *Income Tax Application Rules* (Canada), and the *Income Tax Regulations* (Canada), in each case as amended to the date of this Agreement.

"Tax Claim" - As defined in Section 5.09(b).

"Tax Legislation" - The Tax Act and all federal, provincial, territorial, municipal, foreign, or other statutes imposing a tax, including all treaties, conventions, rules, regulations, orders, and decrees of any jurisdiction.

"Tax Return" - Any report, return, document, declaration, designation, election or other information or filing (including any amendment thereto) with respect to Taxes required by law to be supplied to any Governmental Authority or to be collected or maintained, including information returns, any documents accompanying payments of estimated Taxes, or requests for the extension of time in which to file any such report, return, document, declaration or other information or filing.

"Third Party Claims" - As defined in Section 12.04.

"TIH/PIH" - Toxic-by-Inhalation/Poisonous-by-Inhalation.

“Title Examination” - As defined in Section 4.03.

“Title Examination Period” - As defined in Section 4.03.

“Transaction” - The transaction contemplated by this Agreement and the Operative Documents.

“Transition Agreement” - The transition agreement in a form reasonably agreed to by the Parties.

“US Acquired Assets” - As defined in Section 2.01(a).

“US Assumed Obligations” - As defined in Section 2.03(b)(i).

“US Buyer” - As defined in the Preamble.

“US Lines” - As defined in Section 2.01(a)(i).

“US Lines Agreements” - Section 2.01(a)(ii).

“US Permits” - As defined in Section 2.01(a)(iii).

“US Purchase Price” - As defined in Section 2.03(a)(i).

“US Rail Assets” - As defined in Section 2.01(a)(i).

“US Real Property” - As defined in Section 2.01(a)(i).

“Valleyfield Terminal” - As defined in Section 2.01(b)(ii).

“Withheld Amount” - As defined in Section 2.06(a).

1.02 Other Definitional Provisions and Rules of Constructions. In this Agreement:

(a) unless otherwise stated, terms, phrases and expressions used in this Agreement (whether or not capitalized) which pertain to railroad operations and service shall have the meaning commonly given such terms under common usage and practice of the railroad industry in 2019;

(b) any reference in this Agreement to “writing” or comparable expressions includes a reference to electronic mail, or comparable means of communication;

(c) words expressed in the singular number shall include the plural and vice versa, words expressed in the masculine shall include the feminine and neuter gender and vice versa;

(d) references to Articles, Sections, Exhibits, Schedules and Recitals are references to articles, sections, exhibits, schedules and recitals of this Agreement;

(e) reference to “day” or “days” are to calendar days unless otherwise indicated;

(f) this “Agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented; and

(g) “include,” “includes” and “including” are deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of similar import.

(h) all references in this Agreement to “\$” or “dollars” shall refer to the currency of the United States of America, unless otherwise stated herein.

1.03 Schedules and Exhibits. The Schedules and Exhibits to this Agreement are incorporated into and form an integral part of this Agreement. If an Exhibit is a form of agreement, such agreement, when executed and delivered by the Parties thereto, shall constitute a document independent of this Agreement. Disclosure in any section or subsection of the Disclosure Schedule and in any Schedule or Exhibit to this Agreement, if sufficient to reasonably inform the Buyer of information required to be disclosed in another Schedule or Section of this Agreement, shall constitute disclosure for purposes of such other Schedule or Section of this Agreement.

ARTICLE II. SALE AND PURCHASE OF ACQUIRED ASSETS;

2.01 Sale and Purchase of Acquired Assets.

(a) Sale and Purchase of US Acquired Assets. Subject to the terms and conditions hereof, US Seller agrees to sell, transfer, assign, and convey to US Buyer, and US Buyer agrees to purchase from US Seller for the US Purchase Price, all right, title and interest of US Seller in or to the US Acquired Assets. Subject to Section 2.02, the “**US Acquired Assets**,” without duplication, consist of:

(i) the land, track, improvements and other infrastructure, including all adjoining siding, industrial, ancillary and yard track property, any communication towers, any safety appliances (e.g. hot box detectors) and any building that is located on and part of such real property north of Syracuse, New York until the US-Canada border consisting more specifically, of the following:

- (1) CSX’s St. Lawrence Subdivision between CSX milepost QM 3.0 at or near Woodard, New York, and CSX milepost QM 183.1 at or near the US-Canadian border, a distance of approximately 179.2 miles;
- (2) CSX’s Fulton Subdivision between CSX milepost QMF 7.2 at or near a connection to CSX’s St. Lawrence Subdivision near

Woodard, New York and QMF 37.95 at or near Fort Ontario, New York, a distance of approximately 31 miles;

- (3) CSX's Balmat Industrial Track between CSX milepost QMB 0 at or near a connection with CSX's St. Lawrence Subdivision near CSX milepost QM 107 and QMB 9, a distance of approximately 9 miles;
- (4) CSX's Rooseveltown Industrial Track between CSX milepost QMR 63 at or near a connection with the St. Lawrence Subdivision at Helena, New York, and CSX milepost QMR 68 at or near Rooseveltown, New York, a distance of approximately 5 miles; and
- (5) CSX's Carthage Branch between CSX milepost QMC 86.8 at or near a connection with CSX's St. Lawrence Subdivision near Philadelphia, New York, and CSX milepost QMC 74.7 at or near Regis, New York, a distance of approximately 12 miles and CSX's connection with the Mohawk, Adirondack, and Northern Railroad Corporation ("**MHWA**").

For a total of approximately 236.3 miles, all as generally shown [in green] on the maps in EXHIBIT B attached hereto and made a part hereof, and described in EXHIBIT B attached hereto and made a part hereof, with cut points indicated on the diagram in EXHIBIT B-1 attached and made a part hereof (collectively, the "**US Real Property**"), including but not limited to (x) the roadbed, any and all tracks (including the main track, side tracks, spur tracks, connecting tracks, yard tracks, industry tracks and team tracks), track fastening, rails, ties, switches, connections, crossings, bridges, tunnels, trestles, culverts, buildings, ballast, railroad signs, signals and connecting apparatus, crossing protection devices, communication lines, communication towers, poles and structures and their associated radio facilities, and auxiliary tracks (to the extent of US Seller's ownership interest) that are affixed to the US Real Property between the above described points as of the date of this Agreement and (y) stations, culverts, structures, parking and storage areas, depots, yards, buildings, and all other improvements, fixtures and appurtenances owned, used, held for use or otherwise held by US Seller in connection with the US Real Property (collectively, the "**US Rail Assets**"). The US Real Property and US Rail Assets are hereinafter collectively referred to as the "**US Lines**."

(ii) all Contracts set forth on Schedule 2.01(a)(ii) (the "**US Lines Agreements**"), it being understood and agreed that the US Lines Agreements will not include any Seller customer contracts and that such customer contracts, to the extent containing obligations relating specifically to the US Lines, will have been terminated or amended by Seller (so as to fully terminate any such obligations) prior to Closing;

(iii) all Permits, licenses (excluding any PTC or FCC related licenses other than as disclosed on Schedule 5.17(a)), franchises, operating authorizations and approvals in the name of Seller which relate to the operation or use of any of the US Lines, including those listed on Schedule 2.01(a)(iii) (collectively, the “**US Permits**”);

(b) Sale and Purchase of Canadian Acquired Assets. Subject to the terms and conditions hereof, Canadian Seller agrees to sell, transfer, assign, and convey to Canadian Buyer, and Canadian Buyer agrees to purchase from Canadian Seller for the Canadian Purchase Price, all right, title and interest of Canadian Seller in or to the Canadian Acquired Assets. Subject to Section 2.02, the “**Canadian Acquired Assets**,” without duplication, consist of:

(i) the land, track, improvements and other infrastructure, including all adjoining siding, industrial, ancillary and yard track property, any communication towers, any safety appliances (e.g. hot box detectors) and any building that is located on and part of such real property of CSX’s Montreal Subdivision between CSX milepost QM 183.1 at or near the US-Canadian border and QM 226.1 at or near Beauharnois, Quebec (excluding the portion subject to the Beauharnois to Valleyfield Lease, which includes the Diageo Industrial Spur (MP QMD 0.10 to QMD 1.50)) and the Valleyfield Industrial Track between milepost QMV 1.00 and QMV 1.80; for a total of approximately 41.8 miles, all as generally shown [in pink] on the maps in EXHIBIT B attached hereto and made a part hereof, and described in EXHIBIT B attached hereto and made a part hereof, with cut points indicated on the diagram in EXHIBIT B-1 attached and made a part hereof (collectively, the “**Canadian Real Property**” and together with the US Real Property, the “**Real Property**”), including but not limited to (x) the roadbed, any and all tracks (including the main track, side tracks, spur tracks, connecting tracks, yard tracks, industry tracks and team tracks), track fastening, rails, ties, switches, connections, crossings, bridges, tunnels, trestles, culverts, buildings, ballast, railroad signs, signals and connecting apparatus, crossing protection devices, communication towers, poles and structures and their associated radio facilities, and auxiliary tracks (to the extent of Canadian Seller’s ownership interest) that are affixed to the Canadian Real Property between the above described points as of the date of this Agreement and (y) stations, culverts, structures, parking and storage areas, depots, yards, buildings, and all other improvements, fixtures and appurtenances owned, used, held for use or otherwise held by Canadian Seller in connection with the Canadian Real Property (collectively, the “**Canadian Rail Assets**” and together with the US Rail Assets, the “**Rail Assets**”). The Canadian Real Property and Canadian Rail Assets are hereinafter collectively referred to as the “**Canadian Lines**.”

(ii) the land (developed or undeveloped), buildings, track and other improvements that are located on or part of CSX’s Valleyfield Intermodal Terminal (“**Valleyfield Terminal**”) which is located in Valleyfield, Quebec, exclusive of the Valleyfield Equipment;

(iii) the land, track, improvements and other infrastructure, including all adjoining siding, industrial, ancillary and yard track property, any communication towers, any safety appliances (e.g. hot box detectors) and any building that is located on and part of such real property of CSX's Montreal Subdivision between QM 226.1 and QM 234.7 at or near Chateauguay, Quebec (the "**Chateauguay Segment**");

(iv) all Contracts set forth on Schedule 2.01(b)(iv) (the "**Canadian Lines Agreements**"), it being understood and agreed that the Canadian Lines Agreements will not include any Seller customer contracts and that such customer contracts, to the extent containing obligations relating specifically to the Canadian Lines, will have been terminated or amended by Seller (so as to fully terminate any such obligations) prior to Closing; and

(v) all Permits, licenses, franchises, operating authorizations and approvals in the name of Seller which relate to the operation or use of any of the Canadian Lines, including those listed on Schedule 2.01(b)(v) (collectively, the "**Canadian Permits**").

(c) Contracts and Consents. Seller and Buyer shall work cooperatively to obtain any consent required for the assignment of any Contract or Permit referenced in this Agreement and will similarly work cooperatively to work around any lack of consent required for the assignment of any such Contract or Permit to place the Parties in the same position each would have been in had the consent been obtained (including by having the Seller hold any such Contract or Permit in trust for the benefit of the Buyer, provided that the Buyer shall, at its cost, be responsible for performing any obligations thereunder for and on behalf of the Seller), and *provided further*, that Seller may terminate any such Contract in any manner that allows for termination under such Contract and the Parties will work in good faith to shorten to the extent practicable the duration of any such trust, *provided however*, that nothing set forth in this Agreement shall require any Party to assign or assume any Contract or Permit if the same would result in the violation of any Law.

(d) Conveyance. Conveyance of the US Real Property shall be made by the relevant Deed conveying all of Seller's right, title and interest in the US Real Property on an "as is, where is" basis, without any warranty, express or implied, and in respect of the Canadian Real Property, Valleyfield Terminal and Chateauguay Segment, on an "as is, where is" basis, without any warranty, express or implied, at Buyer's own risk and peril, other than that the Lines are free and clear of all recorded mortgages, deeds of trust, hypothecs and security interests. To the extent necessary, conveyance of the US Acquired Assets other than the US Real Property and conveyance of the Canadian Acquired Assets other than the Canadian Real Property, Valleyfield Terminal and Chateauguay Segment shall be by Quitclaim Bill of Sale. In the event Buyer is unable to record the Deed related to the US Real Property due to state or local recording requirements (including as to subdivision, survey, legal description, perfection or opposability of Seller's rights in the US Real Property or in or in relation to any of the US Real Property) Buyer shall be responsible for satisfying such state or local requirements at its sole cost and expense. To the extent Seller's title to the Real Property consists of railroad easements and servitudes, and therefore only railroad easements and servitudes are being acquired by Buyer, Buyer

acknowledges that such railroad easements and servitudes may not survive the cessation of railroad activities on the Lines by Buyer, its successors and/or assigns. The conveyance of the Real Property shall be made subject to the following which shall survive Closing:

- (i) All existing agreements, encroachments, Claims, easements, servitudes, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Agreement provides actual notice thereof, by operation of law or otherwise;
- (ii) All existing telecommunications facilities, public and private utilities, reservations, exceptions and restrictions whether or not of record;
- (iii) Legally applicable building, zoning, subdivision and other federal, state, provincial, county, municipal or local laws, ordinances and regulations;
- (iv) Property taxes and assessments, both general and special, which may become due or payable on or after the Closing Date, and which Buyer assumes and agrees to pay;
- (v) Any and all encroachments which might be revealed by a survey meeting applicable state or provincial minimum technical requirements;
- (vi) Any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways.

2.02 Excluded Assets. It is expressly understood and agreed that, notwithstanding the provisions of Section 2.01, the Acquired Assets shall not include the Excluded Assets, including those set forth in Schedule 2.02.

2.03 Purchase Price.

(a) Payment of Purchase Price. The aggregate Purchase Price for the Acquired Assets is [REDACTED], which Purchase Price shall be allocated by the Parties in good faith between the U.S. Acquired Assets and the Canadian Acquired Assets based on the respective values of such assets within forty-five (45) days of the Execution Date.

(i) The purchase price for the US Acquired Assets determined in accordance with this Section 2.03(a) (the “**US Purchase Price**”), shall be payable from US Buyer to US Seller at Closing by wire transfer of immediately available funds prior to 12 a.m., New York, New York time, to a bank account to be designated in writing by US Seller to US Buyer not less than three (3) business days prior to Closing.

(ii) Subject to Sections 2.06 and 2.07, the purchase price for the Canadian Acquired Assets determined in accordance with this Section 2.03(a)

(the “**Canadian Purchase Price**” and together with the US Purchase Price, the “**Purchase Price**”) shall be payable from Canadian Buyer to Canadian Seller at Closing by wire transfer of immediately available funds prior to 12 a.m., New York, New York time, to a bank account to be designated in writing by Canadian Seller to Canadian Buyer not less than three (3) business days prior to Closing.

(b) Assumed Obligations.

(i) As additional consideration for the Acquired Assets, US Buyer shall assume the following obligations and liabilities (the “**US Assumed Obligations**”):

- (1) obligations and liabilities of US Seller arising under the US Lines Agreements in accordance with and subject to the terms and conditions of the Assignment and Assumption Agreement;
- (2) obligations and liabilities of US Seller arising under the US Permits in accordance with and subject to the terms and conditions of the Assignment and Assumption Agreement;
- (3) except as provided in the Operative Documents or such other operating agreements as may be entered into from time to time covering US Seller’s operations over the US Lines after the Closing, all Environmental Liabilities (except for the Special Environmental Liabilities) arising after the Closing Date which result from or are related to the US Real Property and US Acquired Assets, including for greater certainty all such liabilities related to Hazardous Substances present on or migrating to or from the US Real Property or US Acquired Assets at Closing;
- (4) all real estate Taxes that US Buyer is obligated to assume under Section 2.04; and
- (5) the Shared Employee Costs (up to the Shared Employee Costs Cap).

(ii) As additional consideration for the Acquired Assets, Canadian Buyer shall assume the following obligations and liabilities of Canadian Seller (the “**Canadian Assumed Obligations**” and together with the US Assumed Obligations, the “**Assumed Obligations**”):

- (1) obligations and liabilities of Canadian Seller arising under the Canadian Lines Agreements in accordance with and subject to the terms and conditions of the Assignment and Assumption Agreement;

- (2) obligations and liabilities of Canadian Seller arising under the Canadian Permits in accordance with and subject to the terms and conditions of the Assignment and Assumption Agreement;
- (3) except as provided in the Operative Documents or such other operating agreements as may be entered into from time to time covering Canadian Seller's operations over the Canadian Lines after the Closing, all Environmental Liabilities arising after the Closing Date which result from or are related to the Canadian Real Property and Canadian Acquired Assets, including for greater certainty all such liabilities related to Hazardous Substances present on or migrating to or from the Canadian Real Property or Canadian Acquired Assets at Closing;
- (4) all real estate Taxes that Canadian Buyer is obligated to assume under Section 2.04; and
- (5) the Shared Employee Costs (up to the Shared Employee Costs Cap) and the Post-Closing Employment Obligations, if any.

(c) Excluded Obligations. Buyer shall not assume and shall not be responsible to pay, perform, or discharge any Liabilities of the Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Obligations (the “**Excluded Obligations**”), including, without limitation, any obligations or liabilities relating to any On-Line Employees or other employees of any Seller working on any Lines, or under any benefit plan, retirement, severance or deferred compensation arrangement of Seller for the benefit of such employees, other than the Shared Employee Costs and Liabilities, if any, arising out of any Post-Closing Employment Obligations.

2.04 Real Estate Taxes. Seller shall pay all Taxes assessed against any Acquired Assets (which for the avoidance of doubt will not include Taxes based on net income even if referred to as “real estate Taxes” or “property Taxes”) that are due and payable as of the Closing Date. US Buyer shall assume and pay when due all such Taxes that become due and payable after the Closing Date with respect to the US Acquired Assets. Canadian Buyer shall assume and pay when due all such Taxes that become due and payable after the Closing Date with respect to the Canadian Acquired Assets. At Closing, the relevant Buyer and Seller shall each pay its share, prorated as of the Closing Date, of any such Taxes that are due and payable during the calendar year in which Closing occurs. If the relevant Tax statements have not been received prior to Closing, the Taxes shall be prorated based upon the most recent property tax statements, which proration shall be final and not subject to further adjustment based on receipt of actual property Tax statements or any audit. For any year in which a proration is required, Buyer will file all required Tax Returns incident to these Taxes assessed for the year in which the Closing Date occurs that are not paid by Seller as of the Closing Date.

2.05 Allocation of Purchase Price. Allocation of US Purchase Price. For Tax purposes, Buyer and Seller agree that the US Purchase Price shall be allocated in the manner required by Section 1060 of the Code and applicable Treasury Regulations. In making such allocations the

fair market values and related methodologies reflected on Schedule 2.05(a) shall apply. Each Party shall file IRS Form 8594, Tax Returns and other filings and reports for Tax purposes with the allocation set forth on Schedule 2.05(a) and shall not take any position which is inconsistent with such allocation.

(b) Allocation of Canadian Purchase Price. The Canadian Purchase Price will be allocated among the Canadian Acquired Assets in accordance with Schedule 2.05(b) (as determined by the Parties, acting reasonably and in good faith), and the values so attributed to the Canadian Acquired Assets are the respective fair market values thereof. The Seller and the Buyer shall prepare and file their respective Tax Returns in a manner consistent with those allocations and shall not take any position inconsistent with those allocations. If any such allocation is disputed by any taxation or other Governmental Authority, the Party receiving notice of such dispute shall promptly notify the other Party and the Parties shall use their reasonable best efforts to sustain those allocations. The parties shall share information and cooperate to the extent reasonably necessary to permit the transactions contemplated by this Agreement to be properly, timely and consistently reported.

2.06 Section 116 Withholding. Canadian Seller will deliver to Canadian Buyer a certificate issued pursuant to Section 116 of the Tax Act in respect of the sale and purchase of the Canadian Acquired Assets that constitute “taxable Canadian property” (within the meaning of the Tax Act), on the condition that:

(a) If a certificate issued by the Minister of National Revenue pursuant to subsection 116(2) of the Tax Act in respect of the disposition of the Canadian Acquired Assets to Canadian Buyer, specifying a certificate limit in an amount that is not less than the Canadian Purchase Price is not delivered to Canadian Buyer on or before the Closing Date, Canadian Buyer will be entitled to withhold from the Canadian Purchase Price payable to Canadian Seller the amount that Canadian Buyer may be required to remit pursuant to subsection 116(5) of the Tax Act in connection with such purchase (the “**Withheld Amount**”), and Canadian Buyer will pay any such Withheld Amount to the Escrow Agent on the Closing Date and the amount so paid will be credited to Canadian Buyer as payment on account of a portion of the Canadian Purchase Price.

(b) The Escrow Agent will invest, on behalf of Canadian Seller, the Withheld Amount in one or more investments the interest on which is not subject to Canadian withholding Tax under Part XIII of the Tax Act from the Closing Date until the earlier of the date on which the Withheld Amount (or relevant portion thereof) is delivered to Canadian Seller or remitted to the CRA in accordance with this Section 2.06.

(c) If, prior to the 28th day after the end of the month in which the Closing Date occurs (or such later time before which the CRA confirms in writing that the CRA will not enforce the remittance of funds as required by subsection 116(5) of the Tax Act and that Canadian Buyer will not be liable for interest and penalties in respect of the late remittance of the funds withheld (the “**Comfort Letter**”), Canadian Seller delivers to Canadian Buyer (with a copy to the Escrow Agent):

(i) a certificate issued by the Minister of National Revenue under subsection 116(2) of the Tax Act in respect of the disposition of the

Canadian Acquired Assets to Canadian Buyer, the Escrow Agent will promptly pay to Canadian Seller the lesser of (i) the Withheld Amount and (ii) the Withheld Amount less the product of X and Y, where X is the amount, if any, by which the Canadian Purchase Price exceeds the certificate limit specified in such certificate and Y is the percentage specified in subsection 116(5) of the Tax Act, together with any interest earned on the Withheld Amount to the date of such payment, or

(ii) a certificate issued by the Minister of National Revenue under subsection 116(4) of the Tax Act in respect of the disposition of the Canadian Acquired Assets to Canadian Buyer, the Escrow Agent will promptly pay the Withheld Amount (reduced, if applicable, by the amounts paid to the Receiver General of Canada, if any, to obtain the certificate) to Canadian Seller, together with any interest earned thereon.

(d) If the Escrow Agent continues to hold all or a portion of the Withheld Amount on the later of the 28th day after the end of the month in which the Closing Date occurs and the time when (if the CRA has provided the Comfort Letter) Canadian Buyer is obliged to remit funds to the CRA, the Escrow Agent will remit to the Receiver General of Canada the amount required to be remitted pursuant to subsection 116(5) of the Tax Act and the Escrow Agent will pay to Canadian Seller any remaining portion of the Withheld Amount, together with interest earned thereon, prior to such remittance.

(e) Where any amount is remitted to the CRA pursuant to this Section 2.06, the Escrow Agent will furnish Canadian Seller and Canadian Buyer with confirmation that such remittance has been made. Any such remittance will be deemed to have been paid by Canadian Buyer to Canadian Seller on account of the Canadian Purchase Price.

2.07 Section 1097 Withholding. Canadian Seller will deliver to Canadian Buyer a certificate issued pursuant to section 1097 of the QTA in respect of the sale and purchase of the Canadian Acquired Assets that constitute “taxable Québec property” (within the meaning of the QTA), except that:

(a) If a certificate issued by the Ministre du revenu du Québec pursuant to section 1098 of the QTA in respect of the disposition of the Canadian Acquired Assets to Canadian Buyer specifying a certificate limit in an amount that is not less than the Canadian Purchase Price is not delivered to Canadian Buyer on or before the Closing Date, Canadian Buyer will be entitled to withhold from the Canadian Purchase Price payable to such Canadian Seller the amount that Canadian Buyer may be required to remit pursuant to section 1101 of the QTA in connection with such purchase (the “**Quebec Withheld Amount**”), and Canadian Buyer will pay any such Quebec Withheld Amount to the Escrow Agent on the Closing Date and the amount so paid will be credited to Canadian Buyer as payment on account of a portion of the Canadian Purchase Price.

(b) The Escrow Agent will invest, on behalf of Canadian Seller, the Quebec Withheld Amount in one or more investments, the interest on which is not subject to Canadian withholding Tax under Part XIII of the Tax Act from the Closing Date until the earlier of the date on which the Quebec Withheld Amount (or relevant portion thereof) is delivered to

Canadian Seller or remitted to the Ministre du revenu du Québec in accordance with this Section 2.07.

(c) If, prior to the 28th day after the end of the month in which the Closing Date occurs (or such later time before which the Ministre du revenu du Québec confirms in writing that the Ministre du revenu du Québec will not enforce the remittance of funds as required by section 1101 of the QTA and that Canadian Buyer will not be liable for interest and penalties in respect of the late remittance of the funds withheld (the “**Quebec Comfort Letter**”)), Canadian Seller delivers to Canadian Buyer (with a copy to the Escrow Agent):

(i) a certificate issued by the Ministre du revenu du Québec under section 1098 of the QTA in respect of the disposition of the Canadian Acquired Assets to Canadian Buyer, the Escrow Agent will promptly pay to Canadian Seller the lesser of (i) the Quebec Withheld Amount and (ii) the Quebec Withheld Amount less the product of X and Y where X is the amount, if any, by which the Canadian Purchase Price exceeds the certificate limit specified in such certificate and Y is the percentage specified in section 1101 of the QTA, together with any interest earned on the Quebec Withheld Amount to the date of such payment, or

(ii) a certificate issued by the Ministre du revenu du Québec under section 1100 of the QTA in respect of the disposition of the Canadian Acquired Assets to Canadian Buyer, the Escrow Agent will promptly pay the Quebec Withheld Amount (reduced, if applicable, by the amount paid to the Ministre du revenu du Québec, if any to obtain the certificate) to Canadian Seller together with any interest earned thereon.

(d) If the Escrow Agent continues to hold all or a portion of the Quebec Withheld Amount on the later of the 28th day after the end of the month in which the Closing Date occurs and the time when (if the Ministre du revenu du Québec has provided the Quebec Comfort Letter) Canadian Buyer is obliged to remit funds to the Ministre du revenu du Québec, the Escrow Agent will remit to the Ministre du revenu du Québec the amount required to be remitted pursuant to section 1101 of the QTA and the Escrow Agent will pay to Canadian Seller any remaining portion of the Quebec Withheld Amount, together with interest earned thereon, prior to such remittance.

(e) Where any amount is remitted to the Ministre du revenu du Québec pursuant to this Section 2.07, the Escrow Agent will furnish Canadian Seller and Canadian Buyer with confirmation that such remittance has been made. Any such remittance will be deemed to have been paid by Canadian Buyer to Canadian Seller on account of the Canadian Purchase Price.

ARTICLE III. CLOSING

3.01 Closing Date and Place. The closing of the purchase of the Acquired Assets (the “**Closing**”) shall take place electronically commencing at 10:00 a.m. local time on a Friday to be

agreed by Buyer and Seller within thirty (30) days after the later to occur of (a) the effective date of the Decision without any Material Governmental Condition, and (b) the day on which all other conditions (other than the conditions set forth in Section 9.03 and Section 10.03 of this Agreement, which conditions shall have been satisfied or waived on the Closing Date) to each Party's obligations under ARTICLE IX and X have been satisfied or waived as provided therein, or at such other day, time and place as the Parties may mutually agree (the "**Closing Date**"). Buyer and Seller shall cooperate to facilitate recordation of Deeds by use of a title company to promptly record the Deeds following Closing.

3.02 Deliveries by Seller. At or prior to the Closing, each relevant Seller shall deliver to each relevant Buyer the following, with all instruments being duly executed:

- (a) Interchange Agreements;
- (b) Assignment and Assumption Agreement for each of the (A) US Acquired Assets and (B) the Canadian Acquired Assets;
- (c) Deeds for all real property, easements, servitudes, rights-of-way and other similar interests in real property being conveyed by Seller, as applicable;
- (d) Carload Haulage Agreement;
- (e) Transition Agreement;
- (f) Fiber Optic Agreement;
- (g) Freight Operating Agreement;
- (h) PTC Transition Agreement;
- (i) Affidavits that meet the requirements of Treasury Regulation §1.1445-2(b)(2) and that attest to the non-foreign status of CSX and CSXIT;
- (j) Legal existence certificates and other evidence of each of the Sellers' power and authority as Buyer may reasonably request;
- (k) All required state transfer forms and affidavits of value, if any, and
- (l) Quitclaim Bill of Sale.

3.03 Deliveries by Buyer.

At the Closing, each relevant Buyer shall deliver to Seller the following, with all instruments being duly executed:

- (a) The Purchase Price in the manner provided by Section 2.03(a);
- (b) Interchange Agreements;

(c) Assignment and Assumption Agreement for each of the (A) US Acquired Assets and (B) the Canadian Acquired Assets;

(d) Deeds for all real property, easements, servitudes, rights-of-way and other similar interests in real property being conveyed by Seller, as applicable;

(e) Carload Haulage Agreement;

(f) Transition Agreement;

(g) Fiber Optic Agreement;

(h) Freight Operating Agreement;

(i) PTC Transition Agreement;

(j) Legal existence certificates and other evidence of each of the Buyer's power and authority as Seller may reasonably request; and

(k) All required state transfer forms and affidavits of value, if any, and

(l) Quitclaim Bill of Sale.

3.04 Third-Party Agreements. To the extent any third party requires a particular assignment document that has representations and warranties or indemnification provisions that are different from the terms of this Agreement, as between Buyer and Seller, this Agreement shall control.

ARTICLE IV. ACCESS TO INFORMATION; CERTAIN RESTRICTIONS

4.01 Buyer's Investigation.

(a) To the extent permitted by Law, Seller shall, subject to Sections 4.01(b) and 4.02 of this Agreement and at Buyer's sole cost and risk, permit Buyer and its counsel, accountants, consultants, and other authorized representatives and agents, to have reasonable access throughout the period prior to Closing to, and to make such reasonable investigations, inspections and non-intrusive testing (including surveys, structural and engineering investigations, and non-intrusive environmental tests, studies and analyses) of the Rail Assets, Real Property, property records, surveys, maps, engineering records, leases, licenses, and title information of Seller relating to the Acquired Assets (other than commercially sensitive information as determined by Seller in its reasonable judgment and subject in each case to confidentiality provisions and if so subject, then only in accordance with the terms of such provisions), as Buyer may reasonably deem necessary or advisable in connection with this Agreement and the transactions contemplated hereby; *provided, however,* that Buyer shall give prior notice of its need for such access and investigations and all such access and investigations shall take place during normal business hours and shall not unreasonably interfere with the normal business of Seller; and *provided* further that Buyer and Buyer's agents shall not

communicate with any Governmental Authority concerning the results of any investigation without Seller's advance written approval, unless such communication is required by applicable Law, including Environmental Laws, in which case Buyer shall notify Seller as soon as possible in advance of such required communication.

(b) Buyer may conduct environmental inspections of the Real Property and Acquired Assets (the “**Environmental Examination**”) from the Execution Date until forty-five (45) days after the Execution Date (the “**Environmental Examination Period**”); *provided* that Buyer shall not be permitted to conduct intrusive sampling or testing at any location(s), including of soil, surface water or groundwater, as part of the Environmental Examination during the Environmental Examination Period. If the Environmental Examination discloses existing conditions on or emanating from the Real Property or other Acquired Assets and related operations that constitute a violation of Environmental Laws or otherwise could reasonably be expected to give rise to Claims pertaining to Environmental Liabilities in connection with the continued use of the Real Property and Acquired Assets for railroad purposes as they are currently used in all material respects, and such conditions are not disclosed in documents and information made available to Buyer prior to the date of this Agreement, Buyer may, before the end of the Environmental Examination Period and in its sole and absolute discretion, terminate this Agreement by written notice to Seller and this Agreement shall become null and void, and neither Party shall have any further rights or obligations under this Agreement (except for provisions that are specifically identified as intended to survive such termination, including Section 4.02 and Section 11.03).

4.02 Confidentiality of Information. The Confidentiality Agreement shall survive execution and delivery of this Agreement, and the parties to the Confidentiality Agreement shall continue to comply with the terms thereof. In the event this Agreement is terminated, the obligations under the Confidentiality Agreement shall survive for three (3) years after such termination.

4.03 Post-Signing Due Diligence and Right to Terminate. Buyer may examine title and conduct surveys or other inspections of title (the “**Title Examination**”) to the Real Property and other Acquired Assets from the Execution Date until forty-five (45) days from the Execution Date (the “**Title Examination Period**”). In the event that Buyer, in its sole discretion, is not satisfied with the results of such Title Examination then, no later than fifteen (15) days after the expiration of the Title Examination Period, Buyer may elect to terminate this Agreement, in which event this Agreement (except for provisions that are specifically identified as intended to survive such termination, including Section 4.02 and Section 11.03), without further action of the Parties, shall become null and void, and neither Party shall have any further rights or obligations under this Agreement.

ARTICLE V. ADDITIONAL UNDERTAKINGS AND AGREEMENTS

5.01 Removal of Excluded Assets; Proprietary Locks; Emergency Information.

(a) For a period commencing on the Closing Date and ending on the date which is ninety (90) days thereafter, Buyer shall permit Seller at Seller's sole expense and risk to

remove Excluded Assets located on, in or about the Lines and Seller shall remove such Excluded Assets, including, without limitation, the Valleyfield Equipment. In connection therewith, Buyer shall grant Seller access upon reasonable prior notice for the purpose of removing Excluded Assets during such 90-day period; *provided* that such removal or such access does not unreasonably interfere with the normal business of Buyer and *provided* that Seller, at Seller's expense, shall promptly repair any damage (other than de minimis damage) resulting from such activities. Any such removal shall be performed in a commercially reasonable manner and without damage (beyond de minimis damage) to any property of Buyer, and Buyer may require Seller to execute the Right of Entry Agreement prior to any entry onto property or right-of-way owned by Buyer to perform such removal.

(b) For a period commencing on the Closing Date and ending on the date that is three (3) business days thereafter, Buyer shall permit Seller to remove all switch and derail locks, *provided* that Seller shall (i) coordinate the removal of such switch and derail locks with Buyer, (ii) promptly repair at Seller's expense any damage (beyond de minimis damage) resulting from such removal and (iii) execute and deliver the Right of Entry Agreement prior to any entry onto property or right-of-way owned by Buyer to perform such removal.

(c) No later than seven (7) days after the Closing Date, Buyer shall replace all emergency notification information posted on the Lines, including grade crossings, with its own emergency contact information.

5.02 Post-Closing Access to Certain Records. From and after the Closing until the earlier of (i) the relevant Party's standard document retention period in effect on the Effective Time (but in no event less than two (2) years following the Closing Date or any longer period required by Law) or (ii) the sixth (6th) anniversary of the Closing Date, the Parties will cooperate with one another to make available, under reasonable conditions, copies of records that are required by Buyer for the ownership or operation of the Acquired Assets or by either Party for regulatory or Tax purposes or the performance of obligations assumed by Buyer or retained by Seller, respectively (other than competitively sensitive information as determined by the relevant Party in its reasonable judgment and subject in each case to confidentiality provisions and if so subject, then only in accordance with the terms of such provisions).

5.03 Employee Rights. Subject to Section 5.06, Seller and Buyer, respectively, shall comply with any Law applicable to it concerning employees' rights related to this Transaction. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 5.03 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus ninety (90) days.

5.04 Employee Hiring and Transfer Rights.

(a) US Buyer shall have the right but not the obligation and shall not otherwise be responsible for, or obligated to absorb, hire, or otherwise employ any employees of any Seller that may or will be dismissed or displaced as a result of implementing the transactions contemplated by this Agreement, except as may be required by the STB. In the event US Buyer hires any employees for the continued operations of the US Lines, US Buyer agrees to offer priority hiring consideration to US On-Line Employees (both craft and non-craft).

(b) This Agreement shall not limit any requirements of Law imposed on Buyer to absorb, hire, or otherwise employ or offer priority hiring consideration to any Canadian Employee that may or will be dismissed, furloughed or otherwise displaced as a result of implementing the transactions contemplated by this Agreement (any such requirements of Law being referred to herein as “**Post-Closing Employment Obligations**”). Other than for Post-Closing Employment Obligations, Buyer shall have no obligation to absorb, hire or otherwise employ or offer priority hiring consideration to any Canadian Employee. If, as a result of the application of Post-Closing Employment Obligations, Buyer hires one or more Canadian Employees (each a “**CN Employee**”) to whom severance has not been paid by Seller, and Buyer terminates or furloughs such CN Employee within sixty (60) days following the issuance by the Canadian Industrial Relations Board of a final, non-appealable decision which establishes CNR as a successor employer in respect of such Canadian Employee and the terms on which such Canadian Employee must be integrated into CNR’s workforce (an “**Applicable Terminated CN Employee**”), Seller shall pay Buyer [REDACTED] of the amount of severance owed under Law and incurred by Buyer to terminate or furlough such Applicable Terminated CN Employee (“**Shared CN Employee Costs**”).

(c) Seller shall advise Buyer of all planned communications with On-Line Employees in connection with the sale of the Lines and shall consult with Buyer as to such communications. Nothing contained in this Section 5.04 shall confer any third-party beneficiary rights or other rights or remedies upon any On-Line Employee or act as an amendment to any of the employee benefit plans of Buyer or its Affiliates.

5.05 Restrictions on Future Use. Buyer hereby covenants and agrees that, for a period of twenty-five (25) years following the Closing Date, the Real Property (other than the Chateauguay Segment) shall not be used for any purposes other than as rail or heavy industrial property. In the event Buyer fails to comply with this Section 5.05, Buyer shall remediate, or cause its successor to remediate the relevant Real Property to the applicable standard under Environmental Laws, and indemnify Seller pursuant to Section 12.03(b) hereof, with respect to any Claims or Environmental Liabilities that arise as a failure to do so.

5.06 Labor Protection.

(a) Both before and after the Closing, Buyer and Seller shall cooperate to mitigate Labor Protection. The Parties will request the STB to impose the standard labor protective provisions on the acquisition which are New York Dock Ry. Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad, Inc.—Purchase and Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814 826 (1990), which requires each railroad to negotiate with and pay protection for its own employees, but does not require an umbrella agreement covering employees of both the Buyer and Seller.

(b) Buyer shall share [REDACTED] of Labor Protection costs incurred by Seller pursuant to the provisions of Labor Protection imposed by the STB, applicable Law, any Governmental Authority or a Collective Agreement that pre-exists the transfer of operations and which arise as a result of the transactions contemplated hereby, including, for the avoidance of doubt, any severance or other costs incurred by Seller arising as a result of the termination or furloughing of any Canadian Employees, other than any Post-Closing Employment Obligations

(the “**Shared Employee Costs**”), up to and not exceeding an amount equal to [REDACTED] less the amount of any Shared CN Employee Costs (the “**Shared Employee Costs Cap**”). If payment by Buyer of (i) its share of Shared Employee Costs plus (ii) its share of Shared CN Employee Costs exceeds [REDACTED], Seller shall reimburse Buyer the amount of any such excess.

(c) Any such Shared Employee Costs up to the Shared Employee Costs Cap shall be invoiced by Seller to Buyer on a monthly basis for such Shared Employee Costs incurred in the prior month, which invoice shall provide reasonable back up documentation to allow Buyer to review and audit the Shared Employee Costs, including providing Buyer information reasonably identifying the Employee costs. Any such audit and review shall be conducted at Buyer’s own cost and expense. If Buyer discovers any material issues with respect to such Shared Employee Costs in connection with its inspection, audit or review, then the Parties shall discuss such issues in good faith. If the Parties are unable to agree on the resolution of any such issues, then such Dispute shall be settled in accordance with Section 13.16 (and, for the avoidance of doubt, either Party shall have the right to give notice pursuant to Section 13.16(a) and to invoke the procedures for the resolution of such Dispute). Notwithstanding the forgoing, the Parties acknowledge and agree that Seller shall have the sole and absolute discretion to determine the merits of any employee labor claims. The provisions of this Section 5.06(c) shall apply *mutatis mutandis* to the payment and verification of any Shared CN Employee Costs.

5.07 Condition of Property.

(a) Buyer acknowledges and agrees that prior to Closing it has or will have had the opportunity to inspect the Real Property and other Acquired Assets and Seller’s records to evaluate the condition of the Real Property and other Acquired Assets and, if the Closing occurs, Buyer shall conclusively be deemed to have accepted the Real Property and other Acquired Assets in their present condition (including the condition of title and the environmental condition), and such property shall be conveyed at Closing to Buyer “AS IS, WHERE IS, WITH ALL FAULTS, AT ITS OWN RISK AND PERIL”, as more fully set forth in the introduction to ARTICLE VI, and any representations and warranties of Seller expressly set forth in this Agreement. Other than with respect to Special Environmental Liabilities and Prohibited Encumbrances, and subject to Article XII, Seller does not make any representation or warranty with respect to title or the environmental condition of the Real Property or other Acquired Assets, including with respect to surface and subsurface environmental or geological conditions, whether latent or patent, the nonexistence of any Hazardous Substances, compliance by the Real Property or Seller with any Environmental Law, the existence of any Environmental Liabilities, or habitability or tenantability of the Real Property and Buyer hereby releases Seller from liability for any such condition existing prior to Closing other than the Special Environmental Liabilities or breach of Section 6.05.

(b) Buyer’s acceptance of title to the Real Property and other Acquired Assets shall represent Buyer’s acknowledgment and agreement that: (i) Seller has not made nor has Buyer relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Real Property or other Acquired Assets, except as expressly set forth herein; (ii) Buyer has had an adequate opportunity to inspect the

condition of the Real Property and other Acquired Assets, including any environmental testing, and to inspect documents applicable thereto, and Buyer is relying on such inspection and testing; (iii) the Real Property has been developed and operated as a railroad and for other industrial uses for many years, and the Real Property may be contaminated with Hazardous Substances as a result; (iv) some products and materials that were used in operating Seller's facilities will be left on the Real Property at Closing and, if intended to be discarded and not used, may need to be managed and disposed of in accordance with applicable Environmental Laws; and (v) the Real Property includes piping (above ground and underground piping), drainage mechanisms, and the like.

5.08 Trademarks and Logos. Buyer agrees that: (i) promptly after the Closing Date, Buyer shall take commercially reasonable steps to remove any of Seller's name, trademarks and logos from the Acquired Assets; and (ii) immediately upon termination of the Permitted Use Period, Buyer shall cease and desist from all further use of Seller's trademarks and logos.

5.09 Tax Matters.

(a) Except to the extent Taxes are allocated pursuant to Section 2.04, Seller shall indemnify Buyer and its Affiliates and hold them harmless from and against (i) any Claim attributable to any breach of or inaccuracy in any representation or warranty made in Sections 6.08 and 6.12; and (ii) any Claim attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in this Section 5.09.

(b) Buyer agrees to give written notice to Seller of the receipt of any written notice by Buyer or any of Buyer's Affiliates which involves the assertion of any Claim, or the commencement of any action, in respect of which an indemnity may be sought by Buyer pursuant to this Section 5.09 (a "**Tax Claim**"); *provided*, that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Buyer shall control the contest or resolution of any Tax Claim; *provided, however*, that Buyer shall obtain the prior written consent of Seller (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a Claim or ceasing to defend such Claim; and, *provided further*, that Seller shall be entitled to participate in the defense of such Claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Seller.

(c) All amounts payable by the Canadian Buyer to the Canadian Seller pursuant to this Agreement do not include any goods and services, harmonized sales, value-added, sales, use, consumption, multi staged, ad valorem, personal property, customs, excise, stamp, transfer or similar taxes, duties or charges (collectively, "**Sales Taxes**"). All Sales Taxes are the responsibility and for the account of the Canadian Buyer. The Canadian Buyer shall prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense. The Canadian Seller and the Canadian Buyer agree to use commercially reasonable efforts to mitigate, reduce or eliminate any Sales Taxes, and to obtain any certificate or other document from any Governmental Authority or any other Person as may be available to mitigate, reduce or eliminate any such Sales Taxes that could be imposed on the Canadian Seller or the Canadian Buyer as a result of the consummation of the transactions contemplated under this Agreement. The Canadian Seller and the Canadian Buyer shall cooperate with one another

in the preparation of any necessary Tax Returns and other related documentation with respect to such Sales Taxes (including any exemption certificates and forms as each may request to establish an exemption from (or otherwise reduce) or make a report with respect to such Sales Taxes). To the extent that any Sales Taxes are required to be paid by or are imposed upon the Canadian Seller, the Canadian Buyer shall reimburse, or shall cause to be reimbursed, to the Canadian Seller such Taxes plus interest and penalties within five business days of payment of such Taxes by the Canadian Seller.

(d) Seller and Buyer shall furnish or cause to be furnished to each other, each at its own expense, as promptly as practicable, such information and assistance, and provide additional information and explanations of any material provided, relating to the Acquired Assets as is reasonably necessary for the filing of any Tax Returns, for the preparation of any audit, and for the prosecution or defense of any Claim relating to any adjustment or proposed adjustment with respect to Taxes.

(e) Buyer represents and warrants to Seller that Canadian Buyer is registered under the GST/HST Legislation with registration number 100768779RT0001 and under the QST Legislation under registration number 1000043156TQ0514.

(f) As a result of such registration, Canadian Seller is not required, in respect of the sale of the Canadian Acquired Assets that constitute real property for the purposes of the GST/HST Legislation and the QST Legislation (i) pursuant to paragraph 221(2)(b) of the GST/HST Legislation, to collect from Canadian Buyer the Sales Tax imposed, inter alia, pursuant to subsections 165(1) and 221(1) of the GST/HST Legislation, and Canadian Buyer shall file the prescribed return and pay the Tax to the relevant taxation authority as required by subsection 228(4) of the GST/HST Legislation; and (ii) pursuant to paragraph (2) of section 423 of the QST Legislation, to collect from Canadian Buyer the Sales Tax imposed, inter alia, pursuant to sections 16 and 422 of the QST Legislation and Canadian Buyer shall file the prescribed return and pay the tax to the relevant taxation authority as required by section 438 of the QST Legislation.

(g) Buyer shall indemnify and save harmless Seller from and against any and all Taxes, interest and penalties which may become payable by or assessed against Canadian Seller as a result of any failure by Canadian Buyer to comply with Section 5.09(f).

(h) Notwithstanding anything in this Agreement to the contrary, the provisions of Sections 6.08, 6.12 and this Section 5.09 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 90 days.

(i) To the extent that any obligation or responsibility pursuant to ARTICLE XII may overlap with an obligation or responsibility pursuant to this Section 5.09, the provisions of this Section 5.09 shall govern.

(j) All amounts payable for the Acquired Assets by the US Buyer to the US Seller pursuant to this Agreement do not include any sales, use, consumption, ad valorem, personal property, customs, excise, stamp, transfer or similar taxes, duties or charges imposed by

the United States or its states and localities (collectively, “**US Sales Taxes**”). All US Sales Taxes imposed on or in connection with the US Acquired Assets or the conveyance thereof are the responsibility and for the account of the US Buyer. The US Buyer shall prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense. The US Seller and the US Buyer agree to use commercially reasonable efforts to mitigate, reduce or eliminate any US Sales Taxes, and to obtain any certificate or other document from any Governmental Authority or any other Person as may be available to mitigate, reduce or eliminate any such US Sales Taxes that could be imposed on the US Seller or the US Buyer as a result of the consummation of the transactions contemplated under this Agreement. The US Seller and the US Buyer shall cooperate with one another in the preparation of any necessary Tax Returns and other related documentation with respect to such US Sales Taxes (including any exemption certificates and forms as each may request to establish an exemption from (or otherwise reduce) or make a report with respect to such US Sales Taxes). To the extent that any US Sales Taxes are required to be paid by or are imposed upon the US Seller, the US Buyer shall reimburse, or shall cause to be reimbursed, to the US Seller such Taxes plus interest and penalties within five business days of payment of such Taxes by the US Seller.

5.10 Positive Train Control.

(a) Seller has represented to Buyer pursuant to Section 6.10(c) that positive train control (“**PTC**”) is installed and active along those main line portions of the St. Lawrence Subdivision located within the United States. Upon the Effective Time and subject to Section 5.10(c), US Buyer shall assume all risks related to PTC, including all costs to maintain, and operate and license equipment and software necessary to operate PTC on the US Lines as required following the Effective Time. In addition, upon the Effective Time, US Buyer will assume maintenance and dispatch responsibility for the train control system currently installed along the US Lines and US Seller agrees to provide reasonable resources and effort to support this timing prior to the Effective Time.

(b) Following the Closing, Seller shall provide reasonable resources, design information, inventory of hardware (including wayside radios), supporting software information, and effort to support Buyer’s assumption, integration, and/or modification of the current PTC system and assumption of maintenance and dispatch responsibility for the train control system along the US Lines to satisfy its obligations pursuant to Section 5.10(a).

(c) From and after the Execution Date, the Parties shall cooperate to address the handling of TIH/PIH traffic currently moving on the Lines. Following approval or exemption by the STB of the Transaction, the Parties agree to file a joint request (the “**PTC Request**”) to the Federal Railroad Administration (“**FRA**”) pursuant to 49 C.F.R. § 236.1005(b)(5) that the Line be removed from Seller’s PTC Implementation Plan (“**PTCIP**”) post-closing to reflect the transfer of ownership of the Line from US Seller to US Buyer and that PTC may be removed from the Line given all of the circumstances. Prior to Closing, the Parties will negotiate in good faith to achieve continuing operation of the US Lines, at US Buyer’s sole risk and expense, pursuant to an agreement for the period commencing on Closing and ending on the earlier of (i) the date the US Buyer implements the PTCIP with respect to the US Lines, or (ii) twenty-four (24) months after the FRA grants or denies the PTC Request, which PTC Transition Agreement will include the terms and conditions set forth on EXHIBIT C attached

hereto and such other terms as reasonably agreed to by the Parties (the “**PTC Transition Agreement**”).

5.11 Fiber Optic Cable. Subject to the Fiber Optic Agreement, Seller will reserve in the Quitclaim Deeds (with respect to the US Lines) or in any applicable land transfer documents (with respect to the Canadian Lines), or any future deed as may be required by Seller to enforce this Section 5.11 and maintain the rights provided therein, a perpetual longitudinal easement or real servitude, the provisions of which shall comprise an acknowledgement by Buyer that the third party or Seller, as the case may be, is the owner of the Fiber Optic Cable as applicable over the Real Property for existing or future construction, maintenance, operation, use, replacement, relocation, renewal and removal of all existing and future third party fiber optic cable and longitudinal occupancies. Seller will retain 100% of all fees associated with these reservations and will have the right to enter into and administer new occupations at its own expense; *provided, however*, that the Quitclaim Deeds or applicable land transfer documents (as the case may be) shall further provide that the reservation and exercise of such rights by Seller (i) shall be coordinated with Buyer in good faith, (ii) shall not limit Buyer’s ability to use the Lines for fiber optic cable and longitudinal uses related to Buyer’s freight operations, and (iii) shall not unreasonably interfere with Buyer’s freight operations. Seller and Buyer shall indemnify one another for any costs or liabilities directly attributable to the use of the fiber optic cable and longitudinal occupancies for which that Party is the financial beneficiary (the “**Fiber Optic Liabilities**”).

5.12 Valleyfield Terminal. The Parties acknowledge and agree that Seller, no later than forty-five (45) days after the Execution Date hereof, will issue a notice of its intent to close the Valleyfield Terminal effective sixty (60) days after the notice is given.

5.13 Lease Termination. The Parties hereby agree to terminate the lease for the Beauharnois - Valleyfield Line and amendments thereto effective from and after the Effective Time, along with all associated rights and conditions contained therein, *provided, however*, that the Parties acknowledge and agree that any liabilities that arose prior to the termination of the lease shall survive termination.

5.14 Post-Closing Operations.

(a) From and after the Closing Date, the relevant Buyer will have rights to interchange with carriers that connect directly to the Lines consistent with common practice within the railroad industry. Such relevant Buyer will have rights to interchange with the New York and Ogdensburg Railway Company, Inc. (“**NYOG**”) at Norwood, New York, The Massena Terminal Railroad Company (“**MSTR**”) at Massena, New York, and the MHWa at Carthage, New York.

(b) The Parties agree that CSX will not grant to Buyer, and Buyer will not seek, directly or indirectly, before or after Closing, through the transactions contemplated by this Agreement or other means, access to the New York, Susquehanna and Western Railway (“**NYSW**”) or the Finger Lakes Railway Corporation (“**FGLK**”) or any successor or assign of NYSW or FGLK. In the event such access is acquired or required to be afforded prior to, or as a condition of Closing, either Party shall have the right to terminate the Transaction pursuant to Section 11.02 hereof. Buyer shall be entitled to the limited use of certain trackage as described in

the Operative Documents for the purpose of effectuating interchange, with CSX only, at each of Belle Isle and in Dewitt Yard *provided* that such interchange shall not be used for the purpose of achieving access to NYSW or FGLK. This Section 5.14(b) shall survive Closing.

(c) The Parties agree that for revenue purposes, the interchange will occur at Woodard and the physical interchange at Belle Isle and Dewitt Yard or as may be more particularly described in the Interchange Agreements.

(d) The Parties acknowledge and agree that the Canadian Buyer's acquisition of the Chateauguay Segment shall be for the sole purpose of Canadian Buyer discontinuing or abandoning the Chateauguay Segment without commencing freight rail operations reasonably contemporaneously with the Effective Time and Canadian Buyer shall take all steps legally appropriate to abandon or discontinue rail service on the Chateauguay Segment as of such date. The Parties further acknowledge and agree that, following the Effective Time, Canadian Buyer shall be solely responsible for any obligations or conditions imposed by any Governmental Authority with respect to the Chateauguay Segment and any other costs, expenses or liabilities in connection with the Chateauguay Segment, including in connection with any required upkeep, remedial actions, repairs or removal of bridges or other equipment (collectively, the "**Chateauguay Liabilities**"), and hereby releases Seller and its Affiliates from any Chateauguay Liabilities arising prior to the Effective Time but will not indemnify Seller for any Chateauguay Liabilities.

5.15 Competition Act Approval.

(a) Subject to and in accordance with the provisions of this Section 5.15, the Canadian Seller and the Canadian Buyer shall use commercially reasonable efforts to obtain (and shall cooperate fully with the other in obtaining) as promptly as practicable (and in any event no later than the Drop Dead Date) the Competition Act Approval. Without limiting the generality of the foregoing, subject to applicable Law:

(i) the Canadian Seller and the Canadian Buyer and their respective legal counsel shall be given a reasonable opportunity to review in advance and comment on any proposed communications, notifications, filings and submissions in respect of the Competition Act Approval, and reasonable consideration shall be given to any comments made by such Party and its legal counsel;

(ii) each of the Parties shall provide the other Parties with final copies of such materials or correspondence referred to in Section 5.15(a)(i);

(iii) each of the Parties shall promptly notify the other Parties of any communications with a Governmental Authority relating to the Competition Act Approval as well as the status thereof, and provide copies of summaries of such communications to the other Parties of any inquiries or requests for additional information from the applicable Governmental Authority;

(iv) each of the Parties shall submit any information requested by any Governmental Authority in connection with the Competition Act Approval

as promptly as practicable; and furnish to each other such information and reasonable assistance as the other Party may reasonably request in connection with its preparation of any filing or submission in conjunction with the Competition Act Approval;

(v) none of the Canadian Seller nor the Canadian Buyer shall participate in any meeting with any Governmental Authority in connection with its review of the transactions contemplated hereby unless it consults with the other Parties in advance and, to the extent permitted by such Governmental Authority, provides the other Parties the opportunity to attend and participate thereat; and

(vi) none of the Canadian Seller or the Canadian Buyer will take any action that would have the effect of delaying, impairing or impeding the receipt of any of the Competition Act Approval.

(b) As promptly as reasonably practicable, but in all cases in accordance with Section 13.01(a), the Parties shall file with the Commissioner a request for an ARC under section 102 of the Competition Act or in the alternative, a No-Action Letter in respect of the transactions contemplated by this Agreement.

(c) The Parties shall file a premerger notification form pursuant to Section 114(1) of the Competition Act (the “**CA Notification**”) within ten (10) business days of a request by the Canadian Buyer or the Canadian Seller.

(d) Notwithstanding Section 5.15(a), competitively sensitive information and information as to valuation of a Party may be redacted as necessary before sharing with another Party; *provided* that in the case of competitively sensitive information, unredacted copies are shared on a privileged basis with the other Party’s external legal counsel on the condition that such counsel does not disclose it to directors or employees of that Party other than as approved in writing by the disclosing Party, such approval not to be unreasonably withheld, conditioned or delayed.

(e) The Canadian Seller (collectively) and the Canadian Buyer shall each be responsible for and pay one half of all filing fees in connection with the Competition Act Approval.

5.16 CTA Approval.

(a) Concurrently with a filing made under Section 5.15(b), the Canadian Buyer and the Canadian Seller shall:

(i) make, or cause to be made, all such filings and submissions under the CTA, as may be required for it to complete the transactions contemplated by this Agreement, and

(ii) file all such filings and notifications with the Minister of Transport; and prepare and file a submission in support of obtaining the CTA Approval with the Minister of Transport under the CTA.

Subject to compliance at all times with applicable Law and the other provisions of the Agreement, the Parties shall coordinate and cooperate with each other in exchanging information and supplying such assistance as is reasonably requested in connection with the foregoing including providing each Party with all notices and information supplied to or filed with or received from any Governmental Authority relating to the CTA Approval (except for notices and information which the Parties, in each case acting reasonably, considers highly confidential and sensitive and which may be filed on a confidential basis and exchanged in redacted form).

(b) Each of the Parties may, as advisable and necessary, reasonably designate any competitively sensitive materials provided to the other under this Section 5.16 as “Outside Counsel Only Material.” Such materials and the information therein will be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.

(c) Without limiting the generality of the foregoing, the Canadian Buyer and the Canadian Seller shall:

(i) comply, at the earliest practicable date and after consultation with the other Party, with any request for additional information or documentary material received by it from the Minister of Transport or any other antitrust Governmental Authority relating to the CTA Approval, as applicable;

(ii) cooperate with one another in connection with any filings or other submission aimed at resolving any investigation or other inquiry concerning the transactions contemplated in this Agreement initiated by the Minister of Transport or any other antitrust Governmental Authority relating to the CTA Approval, including providing each other with copies of any notifications, filings, applications and other submissions in draft form so that the other Party can confirm that information contained within is consistent and accurate;

(iii) not participate in any substantive meeting or discussion (whether in person, by telephone or otherwise) with the Minister of Transport or any other antitrust Governmental Authority relating to the CTA Approval in respect of obtaining or concluding the authorization sought from such Governmental Authority, unless it consults with the other Party in advance and gives the other Party or its legal counsel the opportunity to attend and participate thereat, unless such Governmental Authority requires otherwise; and

(iv) cause any applicable waiting periods under the CTA to terminate or expire at the earliest possible date and obtain the CTA Approval.

5.17 Radio Communications.

(a) As soon as practicable after the execution of this Agreement, the US Buyer and Seller shall make, or cause to be made, appropriate applications with the FCC for the full or partial assignment of the radio station authorizations set forth in Schedule 5.17(a) to the extent such authorizations apply to radio facilities located on the US Lines (the “**FCC Licenses**”). US Buyer and Seller shall cooperate to obtain FCC approval of such applications (“**FCC Approval**”).

(b) Within thirty (30) Business Days of the Closing, US Buyer shall make appropriate applications with the FCC to amend the assigned FCC Licenses to delete any radio frequencies not governed by the provisions of Section 5.17(c).

(c) Seller concurs, consents and agrees to US Buyer’s licensing and use after Closing of the radio frequencies, currently utilized by Seller, in connection with US Buyer’s rail operations on the US Lines identified in Schedule 5.17(a). Seller shall reasonably cooperate in US Buyer’s FCC licensing of such frequencies, including providing required or requested concurrences to Transportation Technology Center, Inc. in connection with frequency coordination of US Buyer’s FCC applications. US Buyer shall reasonably cooperate to prevent interference with Seller’s radio operations in US Buyer’s use of the designated frequencies.

(d) US Buyer and Seller shall cooperate in making appropriate application to the FCC for transfer of the Antenna Structure Registrations set forth in Schedule 5.17(d).

5.18 Special Environmental Liability Work. Following the Closing, Buyer shall provide Seller with reasonable access to the Massey Yard to perform all work necessary to secure the Massey Yard Resolution, *provided* that such work or such access does not unreasonably interfere with the normal business of Buyer and *provided* that Seller, at Seller’s expense, shall promptly repair any damage (other than de minimis damage) resulting from such activities. Any such work shall be performed in a commercially reasonable manner and without damage (beyond de minimis damage) to any property of Buyer, and Buyer may require Seller to execute the Right of Entry Agreement prior to any entry onto property or right-of-way owned by Buyer to perform such work. Seller shall be solely responsible for communication with any Governmental Authority regarding the Special Environmental Liability and the Massey Yard Resolution. Buyer agrees that it will not participate in any substantive meeting or discussion (whether in person, by telephone or otherwise) with any Governmental Authority relating to the Special Environmental Liability or Massey Yard Resolution, unless it consults with Seller in advance and obtains Seller’s permission.

ARTICLE VI. SELLER’S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that, except as set forth in a Schedule to this Agreement, including an updated or new Schedule under Section 8.03 (the “**Disclosure Schedules**”), the statements contained in this ARTICLE VI are true and correct as of the date of this Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular

date prior to Closing (in which case such representations and warranties will be true and correct as of such date). The Disclosure Schedules shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this ARTICLE VI. For the avoidance of doubt, all Seller representations and warranties set forth in this ARTICLE VI shall be joint and several. The disclosures in any Disclosure Schedule shall qualify other sections and subsections in this ARTICLE VI only to the extent it is clear from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

6.01 Organization and Authority.

(a) Seller is a corporation duly organized and validly existing and in good standing under the Laws of the state or jurisdiction noted in the Recitals. Seller is duly qualified to do business and in good standing in each jurisdiction in which the Acquired Assets are operated by that Seller.

(b) Seller is a non-resident of Canada for purposes of the Tax Act and QTA.

(c) Seller has the corporate power and authority to own, lease and operate the Acquired Assets and to carry on its business related thereto as now conducted and to execute, and deliver this Agreement and to consummate the transactions contemplated by this Agreement and the other instruments and agreements to be executed and delivered by it as contemplated hereby.

(d) The following are registered for purposes of the GST/HST Legislation and have the registration numbers indicated:

CSXT: GST 105203095 RT0001; QST 1022434469 TQ0001

CSXIT: GST 836159004 RT0001; QST 1217094221 TQ0001

SLA – None.

(e) The execution, delivery and performance by Seller of this Agreement and of all other agreements and instruments called for hereunder, and the consummation by Seller of the transactions contemplated by this Agreement, and all such other agreements and instruments called for hereunder, have been duly and validly authorized by all necessary action of the boards of directors of Seller and by any other necessary corporate or shareholder action of Seller under applicable Law, the respective charters and bylaws of Seller and otherwise (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). This Agreement constitutes, and upon execution and delivery each other agreement and instrument called for hereunder will constitute, the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.02 No Conflicts; Consents of Third Parties.

(a) Except for those authorizations, consents, notices, waivers and approvals described in Schedule 6.02(a), the execution, delivery and performance of this Agreement by Seller will not (i) conflict with the respective charters or bylaws of Seller; or (ii) to Seller's knowledge (A) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to terminate, modify or cancel, or require any notice, consent or waiver under, any Lines Agreement; (B) violate any order, judgment, or decree, to which any of the Sellers is bound or to which the Lines or any portion thereof or any of the Acquired Assets is subject; (C) constitute a violation by the Seller of any Law applicable to it; or (D) result in the creation of any Encumbrance upon any of the Acquired Assets.

(b) Except for the approval or consent set forth on Schedule 6.02(b) and the approval or exemption of the Transaction by the STB, no authorization, consent, waiver of right of first refusal, or approval of, or designation, declaration filing with or notice to, any Governmental Authority is required on the part of the Seller in connection with Seller's execution, delivery, and performance of this Agreement.

6.03 Licenses and Permits. To Seller's knowledge¹, the Permits represent all material permits, licenses, franchises, operating authorizations, and approvals from Governmental Authorities or other parties held by Seller in its operation of the Acquired Assets in the manner in which they are now operated, and none thereof is invalid or in default in any material respect and no proceeding is pending or threatened to revoke or limit in any respect any thereof; provided that no representation or warranty is made in this Agreement with respect to FCC licenses or related towers or operations. To Seller's knowledge and except as set forth in Schedule 6.03, each material Permit (other than FCC Licenses) is assignable by Seller to Buyer without the consent or approval of any Governmental Authority or other Party and will continue in full force and effect following the Closing.

6.04 Litigation. Except as disclosed in Schedule 6.04, there is no action, suit, investigation, Claim, arbitration or litigation pending or, to the knowledge of Seller, threatened against or affecting or involving the Acquired Assets, or the business, operations, value or use thereof or related thereto (excluding any such matter with Buyer and its Affiliates) or Seller's ability to perform its obligations under this Agreement, or any of the agreements and instruments called for hereunder, at law or in equity, before or by any court, arbitrator or other Governmental Authority.

6.05 Title to Acquired Assets. Except as disclosed in Schedule 6.05, to Seller's knowledge, there are no existing Prohibited Encumbrances on the Lines.

6.06 List of Agreements. To Seller's knowledge, Schedules 2.01(a)(ii) and 2.01(a)(iii) set forth a list of all Lines Agreements and US Permits being assigned to Buyer hereunder, which relate to the operation of the Acquired Assets, including the following agreements which:

(a) grant another rail common carrier the right to use all or any portion of the Lines (including yards(s) and other facilities) or the right to serve industries located on the Lines;

¹ NTD: Subject to review of Schedule.

(b) grant Seller the right to use all or any portion of the rail line, yard(s) or other facilities of another rail common carrier which relate exclusively to the Lines;

(c) relate to trackage rights, haulage, interchange, joint facility, switching and similar matters which relate to the Lines;

(d) are leases of real property that constitute any part or portion of the operating railroad right of way; or

(e) are leases of real property which relate to the Lines that are not part of the operating railroad right-of-way.

6.07 Status of Agreements. Except as disclosed in Schedule 6.07, to Seller's knowledge, (i) Seller has delivered to Buyer true and complete copies of all Lines Agreements, including all amendments thereto (ii) there has been during the last five years and is continuing no material breach by any other party to any of those Lines Agreements of any of the provisions of any of the Lines Agreements and no condition exists that, with notice or lapse of time or both, would constitute a material breach by Seller or any other party to any of those Lines Agreements that would have a Material Adverse Effect; and (iii) no consent is required with respect to the assignment of any Lines Agreement where the absence of consent or the invalidity of the assignment would result in a Material Adverse Effect.

6.08 Taxes and Assessments. All material Tax Returns required to be filed by Seller relating to the Acquired Assets and their operation have been filed on a timely basis, and all such returns are true, complete, and correct in all material respects. There are no Encumbrances for any Tax on the Acquired Assets except for Taxes not yet due and payable. Except for any Taxes, assessments, fees or other charges (including any interest or penalties) due to any Governmental Authority that Seller is contesting in good faith or will contest through appropriate proceedings, Seller has paid all Taxes, assessments, fees or other charges (including any interest or penalties) due to any Governmental Authority to be paid with respect to the Acquired Assets which are due and payable on and as of the date of this Agreement (subject to any proration required by Section 2.04) and shall (subject to any proration required by Section 2.04) pay prior to the Closing Date all Taxes, and all such material assessments, fees or other charges (including any interest or penalties) due to any Governmental Authority which become due on or prior to the Closing Date with respect to periods prior to the Closing Date. In the case of any Taxes, assessments, fees or other charges (including any interest or penalties) that Seller in good faith is contesting or will contest through appropriate proceedings, Seller shall (subject to any proration required by Section 2.04) pay such amount as is determined in the proceeding.

6.09 [Reserved].

6.10 Legal Compliance.

Except as disclosed in Schedule 6.10,

(a) To Seller's knowledge, there are no pending or threatened actions by a Governmental Authority based on an alleged violation of Law in any material respect that

individually or in the aggregate would have a Material Adverse Effect on the business of the Seller with respect to the Acquired Assets.

(b) To Seller's knowledge, there is no violation of Law by Seller that individually or in the aggregate would have a Material Adverse Effect on the business of Seller with respect to the Acquired Assets.

(c) US Seller has implemented PTC and such PTC is installed and active as and where required with respect to the US Lines.

6.11 [Reserved].

6.12 Canadian Taxes. There are no liens for Taxes upon the Canadian Acquired Assets, except for statutory liens for current Taxes not yet due. All Taxes that were required to be collected or withheld by Canadian Seller have been duly collected or withheld, and all such amounts that were required to be remitted to any Governmental Authority have been duly remitted, and Seller has timely complied with all reporting requirements with respect thereto.

6.13 Canadian Employees. All of the Canadian Employees are subject to a Collective Agreement. As of the Closing Date, all Canadian Employees will have been terminated or placed on furlough by Seller and Seller will have made arrangements to pay, not later than the next regular pay cycle applicable to such Employees following the Closing Date, the amount of severance due to such Canadian Employees upon the termination of their employment or furlough. As of the Execution Date and the Closing Date, there are no post-retirement benefit plans, including pension benefits, retirement benefits, deferred compensation arrangements or post-retirement health care or similar benefits under Seller's Collective Agreements.

ARTICLE VII. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller that the statements contained in this ARTICLE VII are true and correct as of the date of this Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date) and in all cases shall not be deemed continuing representations or warranties after Closing. US Buyer's and Canadian Buyer's representations and warranties pursuant to this ARTICLE VII shall be joint and several.

7.01 Organization and Authority.

(a) US Buyer is a corporation duly organized and validly existing and in good standing under the Laws of Delaware. US Buyer is duly qualified to do business in, and is in good standing under the Laws of, each other state in which the ownership or lease of its property or the nature or conduct of its business or both makes such qualification necessary, except where the failure to be so qualified would not have a material adverse effect.

(b) Canadian Buyer is a corporation duly organized and validly existing and in good standing under the Laws of Canada. Canadian Buyer is duly qualified to do business in,

and is in good standing under the Laws of, each other jurisdiction in which the ownership or lease of its property or the nature or conduct of its business or both makes such qualification necessary, except where the failure to be so qualified would not have a material adverse effect.

(c) US Buyer has the corporate power and authority to own, lease and operate the US Acquired Assets and to carry on its business as now conducted.

(d) Canadian Buyer has the corporate power and authority to own, lease and operate the Canadian Acquired Assets and to carry on its business as now conducted.

(e) The execution, delivery and performance by Buyer of this Agreement and of all other agreements and instruments called for hereunder, and the consummation by Buyer of the transactions contemplated by this Agreement, and all such other agreements and instruments called for hereunder, have been duly and validly authorized by all necessary corporate or shareholder action of Buyer under applicable Law, the articles of incorporation and bylaws of Buyer and otherwise (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). This Agreement constitutes, and upon execution and delivery each other agreement and instrument called for hereunder will constitute, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

7.02 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement by Buyer will not (a) conflict with the articles of incorporation or bylaws of Buyer; (b) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any Party the right to terminate, modify or cancel, or require any notice, consent or waiver under, any lease, agreement, commitment, financing arrangement (including financial covenants) or other instrument to which Buyer is a party; (c) violate any order, judgment, or decree, to which Buyer or any of its Affiliates are bound; or (d) constitute a violation by Buyer of any Law or regulation applicable to it. Except for approval of the STB, no authorization, consent, waiver of right of first refusal, or approval of, or designation, declaration or filing with, any Governmental Authority is required on the part of Buyer in connection with the execution, delivery, and performance of this Agreement.

7.03 Litigation. There is no action, suit, investigation, Claim, arbitration or litigation pending, or to the knowledge of Buyer, threatened against or involving Buyer at law or in equity before or by any court, arbitrator or other Governmental Authority as to which there is a reasonable possibility of an adverse determination that could have a material adverse effect upon the ability of Buyer to perform its obligations under this Agreement or any of the other agreements or instruments called for hereunder.

7.04 Information Provided. Buyer has assessed the environmental condition of the Acquired Assets and reached its own determination as described in Section 5.07. Buyer assumes

full responsibility for making its own evaluation of the physical condition of the Lines, the Real Property, title to the Real Property and Encumbrances thereon, and the Acquired Assets, including the environmental condition of the property. Except with respect to Special Environmental Liabilities and Prohibited Encumbrances, the terms in this Section 7.04 are the exclusive terms with respect to environmental matters, Hazardous Substances, Environmental Laws, and Environmental Liabilities related to the Lines. Buyer also represents and warrants that it is making its own evaluation of projected revenues and operating results from the Acquired Assets and that Seller has not provided any estimates, projections, forecasts, plans, budgets or pro-forma information.

7.05 Financial Resources. Buyer has and will have at Closing the financial resources necessary to pay the Purchase Price and to consummate the transactions contemplated hereby without any financing by a third party.

7.06 Continued Operation. Other than as set forth herein (including with respect to the Chateauguay Segment) or in the Operative Documents, Buyer is purchasing the Lines for continued railway operation and to provide rail service to customers on the Lines.

ARTICLE VIII. PRECLOSING COVENANTS

8.01 Negative Covenants. From the date of this Agreement until the Closing, Seller shall not, and shall not permit any of its Affiliates to, without the prior written approval of Buyer, which approval will not be unreasonably delayed or withheld, do or agree to do any of the following:

- (a) Sell, assign, lease, mortgage, pledge, grant any right or interest in, or otherwise transfer or dispose of, all or any part of the Acquired Assets other than in the ordinary course of business or maintenance and without materially impacting the value of the Acquired Assets;
- (b) Grant any new trackage rights over the Acquired Assets;
- (c) Enter into operating rights or haulage rights over the Acquired Assets;
- (d) Amend or renew any Contracts relating to the Acquired Assets which individually, or in the aggregate, would have a Material Adverse Effect;
- (e) Abandon any part of the rail lines included in the Lines; or
- (f) Add any Prohibited Encumbrances.

8.02 Affirmative Covenants. Pending and prior to the Closing Date (other than as specifically required by this Agreement), Seller shall:

- (a) Use commercially reasonable efforts to preserve Seller's relationships with suppliers, customers, employees and others having business relations with Seller which relate to the Acquired Assets;

(b) Operate the Acquired Assets in Seller's normal and usual manner in all material respects and keep and maintain the Acquired Assets substantially in their present condition;

(c) With effect immediately prior to the Closing Date, terminate or place on furlough all Canadian Employees and, not later than the next regular pay cycle applicable to such Employees following the Closing Date, pay the amount of severance due to such Canadian Employees upon the termination of their employment or furlough; and

(d) With effect prior to the Closing Date, terminate or amend (so as to delete any such obligations) any Seller customer contracts that contain obligations relating specifically to the Lines.

8.03 Amended Schedules.

(a) On or prior to the Closing Date, Seller shall deliver to Buyer supplemental information concerning events or circumstances occurring subsequent to the date hereof that would, in Seller's reasonable judgment, cause the closing condition in Section 9.01 not to be met. If such supplemental information relates to an event or circumstance occurring subsequent to the date hereof that would enable Buyer to terminate this Agreement as a result of the information so disclosed and Buyer does not exercise such termination right, then such supplemental information shall constitute an amendment of the representation, warranty or statement to which it relates for purposes of ARTICLE XII. Seller shall have the right to update or modify its Disclosure Schedules (or add additional Disclosure Schedules with respect to any representations and warranties not referencing any Disclosure Schedules on the Execution Date) based on changed circumstances occurring after the Execution Date, and so long as (i) the applicable representations and warranties were true and correct, in all material respects, as of the Execution Date, and (ii) such updates and/or modifications were not the result of Seller's acts or omissions in violation of this Agreement, then same shall not be a default by Seller hereunder, *provided, however*, that such updates or modifications shall constitute a failure of the condition to Buyer's obligation to close in Section 9.07 if such update or modification contains a disclosure of a fact, condition or effect which has, or is reasonably likely to have, a Material Adverse Effect and *provided further*, that in the event Buyer waives such condition and proceeds with the Closing, such disclosure shall not be considered a breach of a representation or warranty and Buyer may not pursue any other remedies against Seller in connection with such disclosed fact, condition or effect.

(b) In furtherance, and not in contravention of the foregoing, Seller may amend Schedules 2.01(a)(ii) and 2.01(b)(iv) to add any Contracts related to the Lines, subject, however, to the second sentence of Section 13.02.

8.04 Other Preparation. Prior to the Closing, Seller and Buyer shall prepare and enter into their respective information systems all necessary information for interline settlements and rate exchange network data.

ARTICLE IX.
CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

The obligations of Buyer to purchase the Lines and the Acquired Assets and to proceed with the Closing are subject to the satisfaction of the Buyer or, at the option of Buyer, to waiver at or prior to the Closing of each of the following conditions:

9.01 Representations and Warranties. The representations and warranties of Seller made herein or in any agreement, instrument or document called for hereunder shall have been true and correct as of the date of this Agreement or as of the date of such other agreement, instrument or document, as the case may be (except for such representations and warranties that speak as of an earlier date, which representations and warranties shall have been true and correct as of such earlier date), and shall be true and correct in all respects (where such representations or warranties contain materiality qualifiers) or in all material respects (where such representations or warranties do not contain materiality qualifiers), as the case may be, on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for such representations and warranties that speak as of an earlier date, which representations and warranties shall be true and correct in all respects or in all material respects, as the case may be, as of such earlier date); and Seller shall have performed and complied in all material respects with all obligations required by this Agreement to be performed or complied with by Seller on or prior to the Closing.

9.02 STB Conditions. The STB shall have served a Decision granting the application and the Decision shall have become effective and neither the STB nor any other Governmental Authority shall have imposed any Material Governmental Condition other than standard labor protective conditions customarily related to such transactions.

9.03 Documents at Closing. Seller shall have delivered to Buyer all agreements, instruments and documents required to be delivered by Seller to Buyer pursuant to Section 3.02.

9.04 No Governmental Action or Legal Proceedings. As of the Closing Date, no statute, rule, regulation, order, decree, directive, writ or judgment shall have been enacted, adopted, issued, promulgated or rendered by any government or by any Governmental Authority (and not subsequently dismissed, settled, withdrawn or terminated) which would as of the Closing Date (a) prevent the consummation at Closing of or restrain or invalidate the transactions contemplated by this Agreement, and by each of the other material agreements and instruments called for hereunder, (b) materially interfere with or prohibit the continued effectiveness of such agreements and instruments or (c) prevent, limit, restrict or impair in any material respect the ownership, use or operation of the Acquired Assets by Buyer in a manner which would have a Material Adverse Effect.

9.05 Competition Act Approval. The Competition Act Approval shall have been obtained.

9.06 CTA Approval. The CTA Approval shall have been obtained.

9.07 Schedule Updates. There shall not have been any updates or modifications to the disclosure schedules pursuant to Section 8.03 hereto which contain a disclosure of a fact,

condition or effect which will, or is reasonably likely to (i) materially increase any Chateauguay Liability or (ii) have, a Material Adverse Effect.

ARTICLE X.

CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

The obligations of Seller to sell, transfer, convey and deliver the Acquired Assets and to proceed with the Closing are subject, at the option of Seller, to the satisfaction or waiver at or prior to the Closing of each of the following conditions:

10.01 Representations and Warranties. The representations and warranties of Buyer made herein or in any agreement, instrument or document called for hereunder shall have been true and correct as of the date of this Agreement or as of the date of such other agreement, instrument or document, as the case may be (except for such representations and warranties that speak as of an earlier date, which representations and warranties shall have been true and correct as of such earlier date), and shall be true and correct in all respects (where such representations or warranties contain materiality qualifiers) or in all material respects (where such representations or warranties do not contain materiality qualifiers), as the case may be, on the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for such representations and warranties that speak as of an earlier date, which representations and warranties shall be true and correct in all respects or in all material respects, as the case may be, as of such earlier date); and Buyer shall have performed and complied in all material respects with all obligations required by this Agreement to be performed or complied with by Buyer on or prior to the Closing.

10.02 STB Conditions. The STB shall have served a Decision granting the application and the Decision shall have become effective and neither the STB nor any other Governmental Authority shall have imposed any Material Governmental Condition other than standard labor protective conditions customarily related to such transactions.

10.03 Documents at Closing. Buyer shall have delivered to Seller on or before the Closing Date all agreements, instruments and documents required to be delivered by Buyer to Seller pursuant to Section 3.03.

10.04 No Governmental Action or Legal Proceedings. As of the Closing Date, no statute, rule, regulation, order, decree, directive, writ or judgment shall have been enacted, adopted, issued, promulgated or rendered by any government or by any Governmental Authority (and not subsequently dismissed, settled, withdrawn or terminated) which would as of the Closing Date (a) prevent the consummation at Closing of or restrain or invalidate the transactions contemplated by this Agreement, and by each of the other agreements and instruments called for hereunder, or (b) materially interfere with or prohibit the continued effectiveness of such agreements and instruments.

10.05 Competition Act Approval. The Competition Act Approval shall have been obtained.

10.06 CTA Approval. The CTA Approval shall have been obtained.

ARTICLE XI. RISK OF LOSS; TERMINATION

11.01 Risk of Loss. Subject to the limitations hereinafter stated, the risk of loss or damage by fire or other casualty or cause to the Acquired Assets until the Closing shall be upon Seller. In the event of such loss or damage prior to the Closing, which adversely affects the operation and use of the Acquired Assets such that such operation or use (i) fails to comply with Law in a material respect; or (ii) fails to meet the standards (or is reasonably likely to meet the standards) set forth on Schedule 11.01 hereto, Seller shall promptly restore, replace or repair the damaged assets to their previous condition at Seller's sole cost and expense.

11.02 Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing (a) by mutual written consent of Sellers and Buyer, (b) by Buyer, if the Closing has not occurred prior to the Drop Dead Date, (c) by Buyer if, as a result of action or inaction by Seller, the Closing shall not have occurred on or prior to the date that is ten (10) Business Days following the date on which all of the conditions to Closing set forth in ARTICLE X are satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing), (d) by Seller, if the Closing has not occurred on or prior to the Drop Dead Date, or (e) by Seller if, as a result of action or inaction by Buyer, the Closing shall not have occurred on or prior to the date that is ten (10) Business Days following the date on which all of the conditions to Closing set forth in ARTICLE IX are satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing); provided that the Party seeking termination pursuant to clause (c) or (e) is not in breach of any of its representations, warranties, covenants or agreements contained in this Agreement, including its obligation to close upon satisfaction of conditions. If this Agreement is terminated in accordance with the preceding sentence, no Party shall have any Liability to any other Party except as otherwise provided herein; *provided, however*, that if the termination of this Agreement is pursuant to clause (c) or (e), the breaching Party will be liable for actual damages incurred by the non-breaching Party as a result of such breach, provided, further, that neither Party shall be liable for punitive, special, exemplary, incidental, indirect or consequential damages and each Party waives all rights of recovery with respect thereto.

11.03 Effect of Termination. In the event of the termination of this Agreement as provided in this ARTICLE XI, this Agreement shall forthwith become null and void and of no further force or effect, except for provisions that are specifically identified as intended to survive such termination (including Section 4.02 and this Section 11.03). Notwithstanding the forgoing, any Liability that arises pursuant to Section 11.02 shall not be eliminated in the event this Agreement becomes null and void.

ARTICLE XII. SURVIVAL; INDEMNIFICATION

12.01 Survival of Warranties; Limitations; Exclusive Remedy.

(a) All representations and warranties made by Buyer and Seller, respectively, in this Agreement or pursuant hereto shall survive the Closing for a period of eighteen (18) months from the Effective Time, except the representations and warranties contained in (i)

Section 6.01 (Organization and Authority), and Section 7.01 (Organization and Authority) shall survive indefinitely (ii) Section 5.09 (Tax Matters); and (iii) Section 6.08 (Taxes and Assessments) and Section 6.12 (Canadian Taxes) shall survive for the applicable period as set forth in Section 5.09(h).

(b) Neither Seller nor Buyer shall have any liability hereunder to each other for a breach of any representation or warranty in this Agreement or the Operative Documents until the amount of Claims (as hereinafter defined) that Seller or Buyer incurs or suffers by reason of or resulting from or in connection with such breaches of representations and warranties by the other exceeds [REDACTED] in the aggregate on a cumulative basis and then only to the extent such Claims by reason of or resulting from or in connection with such breaches exceed such amount on a cumulative basis. The foregoing limitations shall not apply to breaches of representations and warranties in Section 5.09 (Tax Matters), Section 6.08 (Taxes and Assessments), Section 6.12 (Canadian Taxes) and Sections 6.01 and Section 7.01 (Organization and Authority).

(c) The aggregate amount either Party shall be required to indemnify the other Party for breach of a representation or warranty under this Agreement shall not exceed [REDACTED], on a cumulative basis except with respect to the indemnification related to Section 5.09 (Tax Matters), Section 6.08 (Taxes and Assessments), Section 6.12 (Canadian Taxes) and Sections 6.01 and Section 7.01 (Organization and Authority). For the avoidance of doubt, the cap referenced in this Section 12.01(c) applies only to the indemnification obligation under Section 12.02(a) and Section 12.03(a), respectively, and not to any other indemnification obligation contained in this Agreement.

(d) All covenants made by Buyer and Seller in this Agreement or pursuant hereto which by their terms are specifically intended to be performed from and after the Closing shall survive the Closing.

(e) Any claim for indemnification under this Agreement shall be reduced by any insurance payment received (or any previous indemnification refunded) provided that any indemnification payment made shall be promptly made notwithstanding any potential insurance recovery.

(f) No Party shall be required to indemnify another Party for punitive, special, exemplary, incidental, indirect or consequential damages and each Party waives all rights of recovery with respect thereto, except to the extent such damages are required to be paid to a non-affiliated third party pursuant to a successful Third Party Claim.

(g) The Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud or criminal activity in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in Section 5.05, Section 5.09, Section 5.11, the specific performance provisions set forth in Section 13.18 and this ARTICLE XII. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under law, any and all rights, claims and causes of action

for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party and its Affiliates and each of their respective representatives arising under or based upon any law, except pursuant to the provisions referenced in this ARTICLE XII. Nothing in this Section 12.01 shall limit any person's right to seek and obtain any equitable relief to which any person shall be entitled or to seek any remedy on account of any Party's fraudulent or criminal conduct.

12.02 Indemnification by Seller. Subject to the limitations, conditions and provisions of this ARTICLE XII and the Operative Documents, or such other operating agreements as may be entered into from time to time covering Seller's operations over the Lines after the Closing, Seller, jointly and severally, shall indemnify, defend and hold harmless Buyer, its Affiliates and their respective directors, officers, employees and agents, from, against and with respect to any and all demands, claims, actions or causes of action, suits, proceedings, investigations, assessments, losses, damages, liabilities, costs and expenses, including interest, penalties and attorneys' fees and disbursements, Third Party Claims, and other costs and expenses (collectively, "**Claims**"), asserted against, imposed upon or incurred directly or indirectly by Buyer, by reason of, resulting from, or in connection with:

- (a) any breach of any representation or warranty of Seller contained in this Agreement;
- (b) any noncompliance by Seller with any agreements or undertakings of Seller contained in this Agreement;
- (c) the Excluded Obligations;
- (d) any personal injury, including employee injuries under the Federal Employers' Liability Act, arising from or relating to occurrences (or that portion of continuing occurrences) prior to Closing, excluding Environmental Liabilities (and excluding other matters covered by Section 5.07 and any related Claims for pain and suffering, mental distress, loss of consortium and similar matters and any related Claim for punitive damages);
- (e) the Special Environmental Liabilities; and
- (f) the Fiber Optic Liabilities.

12.03 Indemnification by Buyer. Subject to the limitations, conditions and provisions of this ARTICLE XII and the Operative Documents, or such other operating agreements as may be entered into from time to time covering Buyer's operations over the Lines after the Closing, Buyer, jointly and severally, shall indemnify, defend and hold harmless Seller, its Affiliates and their respective directors, officers, employees and agents from, against and with respect to all Claims asserted against, imposed upon or incurred directly or indirectly by Seller, by reason of, or resulting from, or in connection with:

- (a) any breach of any representation or warranty of Buyer contained in this Agreement;

(b) any noncompliance by Buyer with any agreements or undertakings of Buyer contained in this Agreement;

(c) the ownership, use and operation of the Acquired Assets by Buyer after Closing;

(d) the Assumed Obligations (*provided, however*, that, for the avoidance of doubt, nothing set forth in this Agreement shall require Buyer to indemnify Seller for (i) any Environmental Liabilities relating to any period prior to Closing (other than pursuant to subsection (f) below) or (ii) the Special Environmental Liabilities or (iii) any Chateauguay Liabilities);

(e) the Fiber Optic Liabilities; and

(f) any breach of Section 5.05.

12.04 Conditions of Indemnification. The obligations and liabilities of Seller and of Buyer hereunder with respect to their respective indemnities pursuant to this ARTICLE XII resulting from any Claim or other assertion of liability by third parties (hereinafter called collectively, “**Third Party Claims**”), shall be subject to the following terms and conditions:

(a) The Party seeking indemnification (the “**Indemnified Party**”) must give the other Party (the “**Indemnifying Party**”) written notice of any such Claim within thirty (30) days after the Indemnified Party receives notice thereof, but failure to give notice in such period shall only relieve the Indemnifying Party of its indemnity obligations if and to the extent the delay materially prejudices the defense of such Claim.

(b) The Indemnifying Party shall have the right to promptly undertake, without conditions or reservation of rights, by counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party, the defense of such Claim at the Indemnifying Party’s cost and risk.

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

(d) Anything in this Section 12.04 to the contrary notwithstanding, (i) if there is a reasonable probability that a Claim may materially and adversely affect the Indemnified Party, the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense, compromise or settlement of the Claim, (ii) the Indemnifying Party shall not, without the Indemnified Party’s written consent, settle or compromise any Claim or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant

or the plaintiff to the Indemnified Party of a release from all liability in respect of such Claim in a form reasonably satisfactory to the Indemnified Party, (iii) in the event that the Indemnifying Party undertakes defense of any Claim, the Indemnified Party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the Indemnifying Party and its counsel or other representatives concerning such Claim, and the Indemnifying Party and the Indemnified Party and their respective counsel or other representatives shall cooperate with respect to such Claim, and (iv) in the event that the Indemnifying Party undertakes defense of any Claim, the Indemnifying Party shall have an obligation to keep the Indemnified Party informed of the status of the defense of such Claim and furnish the Indemnified Party with all documents, instruments and information that the Indemnified Party shall reasonably request in connection therewith. Notwithstanding the foregoing, in the event the Indemnifying Party undertakes the defense of any Claim, the Indemnified Party shall have the right to employ its own counsel at the Indemnifying Party's expense if the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be one or more specific defenses available to it which are different from or additional to those available to the Indemnifying Party or there otherwise exists a conflict of interest between the Indemnified Party and the Indemnifying Party.

12.05 Other Indemnity Matters. The indemnities contained in Sections 12.02 and 12.03 shall be continuing (except that as to representations and warranties, the indemnity shall expire on the date the relevant representation and warranty ceases to survive pursuant to Section 12.01(a)); *provided, however*, that with respect to any claim for indemnification for which notice has been given to the Indemnifying Party within the period that the relevant representation and warranty survives, the indemnification period shall be extended until the final resolution of such claim.

ARTICLE XIII. MISCELLANEOUS

13.01 Consents and Filings.

(a) Each of the Parties shall give or cause to be given all required notices and use all commercially reasonable efforts to obtain as soon as practicable after execution hereof, and prior to Closing, all licenses, permits, consents, waivers, approvals, authorizations, qualifications and orders of Governmental Authorities relating to the Acquired Assets as may be required in order to enable Buyer and Seller to perform their respective obligations under this Agreement, and each of the agreements and instruments called for hereunder, including (i) required or desired approvals, exemptions or actions, if any, by the STB with respect to Seller's sale and Buyer's purchase of the Acquired Assets, and (ii) filings, notifications and consents, if any, required under certain state Laws for Buyer's acquisition of the Acquired Assets; *provided* that except as mutually agreed by the Parties, all required filings and notices shall be made no later than thirty (30) days from the date of this Agreement, and *provided further*, that Buyer shall comply with the notice provisions of 49 C.F.R. §213.5 and §237.3 at least thirty (30) days prior to the Effective Time. Buyer and Seller shall cooperate and use all commercially reasonable efforts to respond as promptly as practicable to all inquiries received from the STB or other federal or state agencies for initial or additional information or documentation. The Parties will provide one another with an opportunity to review and comment upon one another's proposed filings and all such filings shall be subject to the approval of both Parties. The Parties

acknowledge and agree that Buyer shall comply with the terms of 49 U.S.C. §§11323-11326 and the implementing regulations and shall argue that the transaction contemplated by this Agreement is a minor transaction as defined in 49 C.F.R. §1180.2(c).

(b) Without limiting the generality of the foregoing, Buyer and Seller shall use reasonable commercial efforts to cause the Closing to occur prior to the Drop Dead Date.

(c) Notwithstanding anything set forth in this Section 13.01 or elsewhere in this Agreement to the contrary, no Party shall be required to accept any Material Governmental Condition.

(d) Prior to the Parties seeking regulatory approval for the Transaction, and subject to refinement and adjustments based on input from the Parties and their advisors, the Parties will (potentially jointly) contact the Lines' customers, shortlines and other stakeholders in order to explain the Transaction without the discussion of prices or freight rates and to seek support before the STB and the Canadian Minister of Transport for the approval or exemption of the Transaction. The Parties, in general, agree to take the following steps in the following order in contacting the customers along the Lines, including those in overhead service, in connection with the regulatory approvals:

(i) Seller's Sales and Marketing Department personnel shall facilitate those conversations among Seller and the relevant customer by notifying (potentially jointly with Buyer) such customer of the proposed Transaction; and

(ii) the Parties shall reach out to the Lines' customers (potentially jointly) in an expeditious manner in order to develop customer support for the Transaction.

13.02 Additional Actions and Documents. At or after the Closing, to the extent not already provided, and without further consideration, Seller, at the expense of Buyer, shall deliver copies of all Lines Agreements in its possession to Buyer as reasonably requested. In the event the Parties identify Contracts that pertain to the Acquired Assets that were inadvertently omitted or included in the Assignment and Assumption Agreement the Parties shall amend the Assignment and Assumption Agreement as soon as reasonably practicable after discovery of the relevant Contract to include or omit the Contract, as applicable, and the Parties shall deem that amendment to have occurred as of the Closing, *provided, that*, Buyer shall not be required to so assume any such Contract entered into by Seller after June 1, 1999 with respect to the Acquired Assets (or otherwise binding with respect to the Acquired Assets and entered into by Seller after June 1, 1999) that has or is reasonably likely to have a Material Adverse Effect. For the avoidance of doubt, for the purposes of the immediately preceding sentence, "Seller" does not include any predecessor of the three named seller parties to this Agreement.

13.03 Brokers. Each Party represents and warrants to the other that such Party has not incurred any liability to any broker, finder or agent for any brokerage fees or commissions or finders' fees or commissions with respect to the transactions contemplated by this Agreement which will be a direct or indirect obligation of the other Party. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any and all Claims asserted against the

other Party for any such fees or commissions claimed by any persons purported to act or to have acted for on or behalf of the Indemnifying Party. The provisions of this Section 13.03 shall survive the Closing.

13.04 Expenses. Except as expressly set forth herein, including with respect to Shared Employee Costs, each Party shall pay its own expenses incident to this Agreement and the transactions contemplated hereunder, including all legal and accounting fees and disbursements, regulatory filing fees and costs of obtaining necessary consents, including but not limited to labor protection imposed by the STB or any other Governmental Authority for the benefit of that Party's (or its Affiliate's) employees.

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

13.06 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the respective successors and permitted assigns of the Parties.

13.07 Assignment. No Party shall assign this Agreement, in whole or in part, whether by operation of Law or otherwise, without the prior written consent of the other Party; *provided* that Buyer may assign its rights hereunder to a direct or indirect wholly-owned subsidiary of Canadian National Railway Company; *provided* further that (i) such assignee shall assume Buyer's obligations hereunder by an instrument in form and substance satisfactory to Seller but such assignment and assumption shall not relieve Buyer of any obligation hereunder and (ii) Buyer shall fully and unconditionally guaranty, in a manner satisfactory to Seller, such assignee's obligations under this Agreement, the Operative Documents and any other agreement or instrument entered into between the Parties in connection with the transactions contemplated hereby. Notwithstanding the foregoing, prior to the Closing, any of the entities comprising Seller may be merged into any direct or indirect wholly owned subsidiary of CSX Transportation, Inc., or its parent, *provided*, that any plan of merger or liquidation/dissolution, as the case may be, will provide that the obligations of each Seller, as the case may be, under this Agreement and any Operative Documents are duly assigned to and assumed by CSX or a direct or indirect wholly owned subsidiary of CSX. Nothing in this Section 13.07 shall survive Closing.

13.08 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any Party to any other Party pursuant to this Agreement shall be in writing and shall be mailed by a recognized overnight courier service, by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, or email, addressed as follows:

(i) If to Seller:

CSX Transportation, Inc.
500 Water St., J-801
Jacksonville, Florida 32202
Attention: Director – Intercarrier Management

With additional copies to:
CSX Transportation, Inc.
500 Water St., J-801
Jacksonville, Florida 32202
Attention: Director – Strategic Planning

And

CSX Transportation, Inc.
500 Water St.
Jacksonville, Florida 32202
Attention: Director – Asset Management

(ii) If to Buyer:

Canadian National Railway Company
935 De La Gauchetière Street West
Montréal, Québec, Canada
H3B 2M9
Attention: Executive Vice President and Chief Financial
Officer
Fax: 514-399-7786
cc: General Counsel
Fax: 514-399-5744

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Kristina Beirne
Email: kristina.beirne@dentons.com

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

13.09 Announcements. Buyer and Seller shall consult with one another with regard to all press releases and other announcements issued at or prior to Closing concerning the transactions contemplated by this Agreement except as necessary as a result of public disclosure requirements under applicable Laws or the applicable rules and regulations of any Governmental Authority or stock exchange. Neither Buyer nor Seller shall issue any such press releases or other

announcement or publicity without the prior written consent of the other Party either before or after Closing.

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

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

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

13.13 Limitation on Benefits. Nothing herein is intended to be for the benefit of any person or entity other than the Parties. It is the explicit intention of the Parties that no person or entity other than the Parties is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement, and all other documents or instruments called for hereunder shall be solely for the benefit of, and shall be enforceable only by, the Parties or their respective successors, legal representatives and assigns as permitted hereunder.

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

13.15 Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each Party, or the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for any particular number of counterparts; but rather any number of counterparts shall be sufficient so long as those counterparts contain the

respective signatures of, or on behalf of, all of the Parties. Signatures delivered by facsimile or PDF shall be binding to the same extent as an original.

13.16 Dispute Resolution, Governing Law- Jurisdiction. All claims, disputes, controversies and disagreements arising out of or relating to this Agreement, including, any question regarding its existence, validity, or termination and any question as to whether a particular dispute is arbitrable hereunder (each, a “**Dispute**”) shall be referred to, settled and finally resolved exclusively in accordance with this Section 13.16, except to the extent permitted by Section 13.16(b).

(a) The Parties shall in good faith attempt to resolve any Dispute promptly by negotiation between executives who have authority to settle the controversy or who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and the response shall include (i) a statement of each Party’s position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing Party’s notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) If the Dispute has not been resolved by these persons within forty-five (45) days following the disputing Party’s notice, or if the Parties fail to meet within thirty (30) days, the Parties shall endeavor to settle the Dispute by mediation administered by the International Centre for Dispute Resolution Mediation Rules before resorting to arbitration as hereinafter provided. The Parties shall endeavor to agree on the selection of the mediator and shall share the cost of the mediator equally. If the Parties are unable to agree on the selection of a mediator within fourteen (14) days of a Party’s request for mediation, then either Party may petition the International Centre for Dispute Resolution for the appointment of a mediator. The place of any physical meetings with the mediator shall be in New York (NY).

(c) Any Dispute which has not been resolved by a non-binding procedure as provided herein within ninety (90) days of the initiation of such procedure shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The arbitration shall be conducted by three arbitrators. The Party initiating arbitration (the “**Claimant**”) shall appoint its arbitrator in its written notice of arbitration (the “**Arbitration Notice**”). The other Party (the “**Respondent**”) shall appoint its arbitrator within thirty (30) days of receipt of the Arbitration Notice and shall notify the Claimant of such appointment in writing. If the Respondent fails to appoint an arbitrator within such 30-day period, the International Centre for Dispute Resolution shall appoint an arbitrator on its behalf in accordance with the International Arbitration Rules, which arbitrator shall be deemed appointed by Respondent. The two arbitrators appointed by the

Parties shall appoint a third arbitrator within thirty (30) days after the Respondent (or the International Centre for Dispute Resolution, as the case may be) has notified the Claimant of the appointment of the Respondent's arbitrator. When the arbitrators appointed by the Claimant and Respondent have appointed a third arbitrator and the third arbitrator has accepted the appointment, the two arbitrators shall promptly notify the Parties of the appointment of the third arbitrator. If the two arbitrators appointed by the Parties fail or are unable to appoint a third arbitrator or so to notify the Parties within such second 30-day period, or if the Parties agree to use a sole arbitrator, then the appointment of the third arbitrator or the sole arbitrator, as the case may be, shall be made by the International Centre for Dispute Resolution, which shall promptly notify the Parties of such appointment. The third arbitrator shall act as chair of any three-arbitrator panel. When there is more than one arbitrator, any award, order, decision, or ruling of the panel shall be made by a majority of the arbitrators. The seat of the arbitration shall be New York (NY) (USA). Notwithstanding Section 13.16(b) of this Agreement, the arbitration and this clause shall be governed by Title 9 (Arbitration) of the United States Code. The arbitrators shall be empowered to award injunctive relief, but not punitive damages. Unless pre-empted by the federal law of the United States, the law of the state of New York shall apply to any Dispute involving the US Acquired Assets. The law of the province of Quebec and the federal law of Canada applicable therein shall apply to any Dispute concerning the Canadian Acquired Assets, without regard to any conflict of laws or choice of laws provisions or principles in the law of Quebec or the federal law of Canada that would permit or require the application of the law of another jurisdiction.

(d) Except to the extent permitted by Section 13.16(b), negotiation, mediation and arbitration, as described in this Section 13.16, shall be the exclusive manner of resolving Disputes. The same person may not serve as both mediator and arbitrator.

13.17 Language.

The Parties have requested that this Agreement and all related documents be drawn up in English only. Les parties aux présentes ont exigé que le présent contrat et tous les documents qui s'y rattachent soient rédigés en anglais seulement.

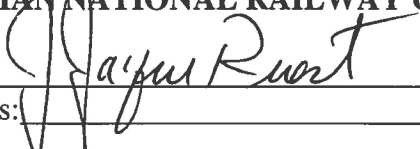
13.18 Specific Performance.

The Parties agree that irreparable damage would occur in the event that any provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to enforce specifically the performance of this Agreement in accordance with its terms. The foregoing is in addition to, and not in lieu of, any other rights a Party may have in respect of a breach of this Agreement, whether at law or in equity.

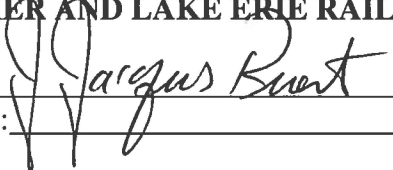
[Signatures on next page.]

IN WITNESS WHEREOF, each of the Parties has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the Execution Date.

CANADIAN NATIONAL RAILWAY COMPANY

By: 
Its: _____

BESSEMER AND LAKE ERIE RAILROAD

By: 
Its: _____

CSX TRANSPORTATION, INC.

By: _____
Its: _____

CSX INTERMODAL TERMINALS, INC.

By: _____
Its: _____

**ST. LAWRENCE AND ADIRONDAK RAILWAY
COMPANY**

By: _____
Its: _____

(Signature Page to Purchase and Sale Agreement)

IN WITNESS WHEREOF, each of the Parties has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the Execution Date.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____
Its: _____

BESSEMER AND LAKE ERIE RAILROAD

By: _____
Its: _____

CSX TRANSPORTATION, INC.

By: Shantel N. Davis
Its: _____
Shantel N. Davis
Vice President, Real Estate
& Facilities Management

CSX INTERMODAL TERMINALS, INC.

By: _____
Its: _____

**ST. LAWRENCE AND ADIRONDAK RAILWAY
COMPANY**

By: _____
Its: _____

(Signature Page to Purchase and Sale Agreement)

IN WITNESS WHEREOF, each of the Parties has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the Execution Date.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____
Its: _____

BESSEMER AND LAKE ERIE RAILROAD

By: _____
Its: _____

CSX TRANSPORTATION, INC.

By: _____
Its: _____

CSX INTERMODAL TERMINALS, INC.

By: Mario Estrella
Its: GM, INTERMODAL OPS

**ST. LAWRENCE AND ADIRONDAK RAILWAY
COMPANY**

By: _____
Its: _____

(Signature Page to Purchase and Sale Agreement)

IN WITNESS WHEREOF, each of the Parties has executed this Agreement or has caused this Agreement to be duly executed on its behalf, as of the Execution Date.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____
Its: _____

BESSEMER AND LAKE ERIE RAILROAD

By: _____
Its: _____

CSX TRANSPORTATION, INC.

By: _____
Its: _____

CSX INTERMODAL TERMINALS, INC.

By: _____
Its: _____

**ST. LAWRENCE AND ADIRONDAK RAILWAY
COMPANY**

By:  _____
Its:  VP, Treasurer

(Signature Page to Purchase and Sale Agreement)

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, as of the Effective Time, as defined in that certain Purchase and Sale Agreement dated as of August 29, 2019 by and between CSX Transportation, Inc., CSX Intermodal Terminals, Inc., and St. Lawrence and Adirondack Railway Company (collectively, “Assignor”) and Canadian National Railway Company [Bessemer and Lake Erie Railroad Company]¹ (“Assignee”), (the “Conveyance Agreement”), Assignor and Assignee have entered into this Assignment and Assumption Agreement (this “Assignment”). Assignor does hereby (i) fully assign unto Assignee all of the right, title and interest of Assignor in contract(s), agreement(s), lease(s), license(s), occupancy agreement(s), permit(s) or easement(s), indicated on Exhibit E-1, attached hereto and made a part hereof (the “Fully Assigned Agreements”); and (ii) partially assign unto Assignee the right, title and interest of Assignor in those contract(s), agreement(s), lease(s), license(s), occupancy agreement(s), permit(s) or easement(s) indicated on Exhibit E-2, attached hereto and made a part hereof (the “Partially Assigned Agreements,” and together with the Fully Assigned Agreements, the “Assigned Agreements”). With respect to such partial assignment, Assignor’s intent is to assign only so much of the agreements indicated on Exhibit E-2 as affects the Acquired Assets as defined in the Conveyance Agreement. This Assignment is not intended to assign or transfer and shall not be construed as assigning or transferring any of Assignor’s rights and interests in (i) those portions of any agreement that do not pertain to the Lines as defined in the Conveyance Agreement or (ii) the Retained Agreements listed in Exhibit E-3, attached (“Retained Agreements”). For the avoidance of doubt, Assigned Agreements shall not include freight transportation contracts with rail customers.

Effective upon the Effective Time, Assignee hereby accepts the assignment and transfer by Assignor and assumes all of Assignor’s obligations and liabilities arising under or connected with the Assigned Agreements and which occur on or after the Effective Time and agrees to perform all of the Assignor’s responsibilities and obligations under the Assigned Agreements occurring on or after the Effective Time. All rights and obligations under the Assigned Agreements arising prior to the Effective Date shall remain the rights and obligations of Assignor and not Assignee. All rights and obligations under the Assigned Agreements arising after the

¹ NTD: There need to be separate Assignments for the US and the Canadian contracts, as contemplated by the Purchase and Sale Agreement.

Effective Time shall be the rights and obligations of Assignee and not Assignor. Assignor shall indemnify, defend and hold Assignee harmless from and against any and all claims, liabilities and costs (including reasonable attorneys' fees) arising out of or relating to Assignor's failure to perform any duty or obligation under the Assigned Agreements which was to have been complied with or performed before the Effective Time. Assignee shall indemnify, defend and hold Assignor harmless from and against any and all claims, liabilities and costs (including reasonable attorneys' fees) arising out of or relating to Assignee's failure to perform any duty or obligation assumed by Assignee under the Assigned Agreements which occurs on or after the Effective Time.

Within thirty (30) days after the Effective Time, Assignor and Assignee shall deliver a joint written notice of this Assignment to each lessee, licensee or grantee to the current address of each in a form to be mutually agreed and issued by Assignee.

Assignor makes no representations or warranties of any kind regarding the quality, content or duration of the Assigned Agreements. Assignee has reviewed the Assigned Agreements and is relying on such review for all purposes whatsoever, including, without limitation, the determination of the scope, duration, character, condition, and suitability of the Assigned Agreements.

For certain of the Assigned Agreements, there may be work or actions required thereunder not fully completed or taken as of the date of this Assignment. Assignee shall be responsible for any work or actions under such agreements not performed or taken as of the date of this Assignment, and shall look solely to the other party under the Assigned Agreements for compensation, if any, in connection therewith. Any and all prepaid fees, charges, rent or income under any of the Assigned Agreements due, payable or paid prior to the date of this Assignment and received by Assignor shall be retained by Assignor. Any Assigned Agreements not paid prior to the Effective Time or for which billing occurs in arrears shall be retained by Assignee on and following the Effective Time.

THE ASSIGNED AGREEMENTS ARE ASSIGNED AND TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE EFFECTIVE TIME. THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH ASSIGNED AGREEMENTS, THE VALUE THEREOF, OR ANY OTHER MATTER WHATSOEVER,

MADE TO OR FURNISHED TO ASSIGNEE BY ASSIGNOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either Assignor or Assignee hereunder, Assignor and Assignee agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, after the date hereof, any further deliveries and assurances and take such other action(s) as may be reasonably necessary to effect the purposes of this Assignment.

In the event the Parties identify contract(s), agreement(s), lease(s), license(s), occupancy agreement(s), permit(s) or easement(s) that pertain to the Acquired Assets that were inadvertently omitted or included in this Assignment, the Parties shall amend this Assignment and the relevant Exhibit(s) as soon as reasonably practicable after discovery of the relevant contract(s), agreement(s), lease(s), license(s), occupancy agreement(s), permit(s) or easement(s) to include or omit the same, as applicable, and the Parties shall deem that amendment to have occurred as of the Effective Time.

In the event this Assignment contradicts or otherwise conflicts with the provisions of the Conveyance Agreement, the Conveyance Agreement shall control. Article XIII of the Conveyance Agreement shall apply to this Assignment *mutatis mutandis*.

This Assignment shall not be recorded.

(signature page follows)

ATTEST:

Title:

CSX Transportation, Inc.

By: _____

Name: _____

Title: _____

ATTEST:

Title:

CSX Intermodal Terminals, Inc.

By: _____

Name: _____

Title: _____

ATTEST:

Title:

St. Lawrence and Adirondack Railway
Company

By: _____

Name: _____

Title: _____

ATTEST:

Title:

Canadian National Railway Company

By: _____

Name: _____

Title: _____

ATTEST:

Title:

Bessemer and Lake Erie Railroad Company

By: _____

Name: _____

Title: _____

(Signature Page to Assignment and Assumption Agreement)

EXHIBIT E-1
Assigned Agreements

EXHIBIT E-2
Partially Assigned Agreements

None.

EXHIBIT E-3
Retained Agreements

EXHIBIT B

Real Property

See attached.

Exhibit C
Positive Train Control (PTC) Transition
Term Sheet

As reflected in the Agreement, in Section 5.10(b), the Seller and US Buyer will negotiate in good faith to develop a PTC Transition Agreement that will provide for CSX, on US Buyer's behalf and at US Buyer's sole risk and expense, to provide reasonable resources, design information, inventory of hardware (including wayside radios), supporting software information, and effort to support US Buyer's assumption, integration, and/or modification of the current PTC system and assumption of maintenance and dispatch responsibility for the PTC system on the relevant portions of the US Lines to allow US Buyer to fulfill Buyer's obligations under applicable federal law as appropriate. Defined terms used in this Exhibit C and not otherwise defined herein shall have the meaning assigned to such terms in the Agreement. Provided the Parties agree on all remaining terms, the general terms and principles of the PTC Transition Agreement will include the following and such other terms as the Parties mutually agree consistent with Section 5.10 of the Agreement.

Purpose:

Upon Closing, pursuant to the PTC Transition Agreement, CSX will be engaged by US Buyer as an independent contractor to provide the services described in the PTC Transition Agreement.

Duration:

The PTC Transition Agreement will be applicable for the period commencing on Closing Date and ending on the earlier of (the "Transition Period");
(i) the date the US Buyer implements/amends its PTC implementation plan with respect to the US Lines, or
(ii) twenty-four (24) months after the FRA grants or denies the PTC Request as defined in Section 5.10(c) of the Agreement, but no longer than the second anniversary of the Closing (the "End Date").

US Buyer Commitments:

For PTC-equipped relevant portions of the US Lines, US Buyer will ensure after December 31, 2020, that any locomotive, other than those operated by a party that is authorized by regulation to operate a train without a PTC-equipped locomotive, is equipped with the software and hardware necessary (and as later may be modified) to ensure interoperability with CSX's PTC system throughout the Transition Period.

US Buyer shall operate under any and all applicable CSX's operating rules, timetables, dispatcher bulletins, and the like during the Transition Period.

US Buyer shall make CSX aware of all changes to the US Lines that impact the PTC functioning, including but not limited to removal or addition of switches, change in track speed, construction of additional infrastructure, or reconfiguration of infrastructure, such as relocation of wayside equipment in a timely fashion consistent with any and all applicable CSX policies and procedures regarding same.

US Buyer shall ensure coordination with appropriate CSX personnel as to any critical asset or rules change that would impact the application or performance of the PTC system.

US Buyer shall promptly notify CSX as to any anomaly, unusual event, or defect that impacts the performance of any wayside equipment on the PTC-equipped relevant portion of the US Lines.

US Buyer shall be responsible for maintaining wayside equipment on the PTC-equipped relevant portion of the US Lines during the Transition Period, and shall conduct such maintenance in accordance with CSX's standards and requirements.

CSX Services:

CSX shall provide the following service to US Buyer during the Transition Period as an independent contractor:

(i) Access to CSX's PTC help desk and support.

(ii) Access to CSX's back office support for PTC monitoring.

(iii) In the event that US Buyer is unable to assume maintenance responsibility for the wayside equipment on the PTC-equipped relevant portion of the US Lines, US Seller shall maintain said equipment until US Buyer during the Transition Period.

(iv) Maintain the PTC Subdivision data file ("SubDiv File"), inclusive of any asset or operating changes verified by CSX and integrated into support files and systems (e.g. GIS).

(v) Undertaking hardware and software upgrades to CSX's PTC infrastructure as necessary for US Buyer's operation over the PTC-equipped relevant portion of the US Lines.

(vi) CSX shall provide a train dispatching desk during the Transition Period.

Risk and Expense:

Pursuant to Section 5.10(c), US Buyer will assume all risk and expense associated with the PTC Transition Agreement, which will be reflected in the PTC Transition Agreement.

The PTC Transition Agreement will include a monthly lump sum compensation structure to address common, recurring activities such as dispatching and access to PTC help desk.

The Parties will include specific compensation for unique or ad hoc services, such as GIS mapping of the infrastructure, replacement parts, including delivery and installation if necessary, hardware or software upgrades and other such matters not expected to be of a recurring nature.

All compensation will reflect CSX's burden rates currently utilized in certain compensatory, intercarrier agreements between the parties.

Labor Protection:

US Buyer will share [REDACTED] of all labor protection, if any, arising out of the allocation of services and labor under the PTC Transition Agreement and such labor protection costs shall be Shared Employee Costs, subject to the Shared Employee Costs Cap and the provisions in Section 5.06(b) of the Agreement.

Holdover:

In the event US Buyer does not take over PTC and dispatching of the US Lines on or before the End Date, CSX shall be entitled to terminate the PTC Transition

Agreement, provided, further, in the event CSX continues to provide PTC or dispatching after the End Date, US Buyer shall pay to CSX a fee (a "Holdover Fee") equal to [\$_____] per day in addition to the compensation structure for each day US Buyer continues to holdover beyond the End Date.

EXHIBIT 15
Operating Plan-Minor
(Public-Redacted)

OPERATING PLAN (Minor)

CNR and B&LE have agreed with CSX to a Purchase and Sale Agreement under which they will acquire CSX's Massena Lines, located generally between Beauharnois, Quebec and Woodard, NY. In this Application, B&LE seeks the Board's approval of B&LE's acquisition and operation of the U.S. Massena Lines,¹ constituting approximately 236.3 miles of CSX rail line in New York State, located generally between Woodard, NY and the U.S./Canada border near Fort Covington, NY (the "Transaction").²

The U.S. Massena Lines include CSX's St. Lawrence Subdivision between Woodard, NY (near Syracuse) and Fort Covington, NY, as well as CSX's Fulton Subdivision,³ Balmat Industrial Track, Rooseveltown Industrial Track, and Carthage Branch. B&LE is also acquiring three yards located on the U.S. Massena Lines: Massena Yard in Massena, NY; Massey Yard in Watertown, NY; and Fulton Yard in Fulton, NY.

Upon satisfaction of all conditions to closing, including receipt of regulatory approval from the Board, the Transaction will be consummated, extending the reach of the CN System into the local markets in New York between Fort Covington and Woodard, NY, and preserving a critical northeastern interline gateway between the CN System and CSX, linking Canada and the U.S.

¹ Abbreviations in this Operating Plan, if not otherwise defined, have the meanings given in the Table of Abbreviations found at pages iv-v of the Application.

² CNR is acquiring from CSX's St. Lawrence and Adirondack Railway Company subsidiary the Canadian portion of the Massena Lines, located generally between Beauharnois, Quebec (near Montreal) and the U.S./Canada border near Fort Covington, NY.

³ CSX previously obtained approval from the Board for discontinuance of track on the Fulton Subdivision between CSX milepost QMF 37.10 and CSX milepost QMF 37.95. *CSX Transportation, Inc. – Discontinuance of Service Exemption – In Oswego County, NY*, Docket No. AB-55 (Sub-No. 731X) (STB served June 17, 2013). B&LE is purchasing that track in its discontinued state.

This Operating Plan, in accordance with the Board's rules applicable to "minor" transactions, "[d]iscuss[es] any significant changes in patterns or types of service" that B&LE plans to make on the U.S. Massena Lines following consummation of the Transaction. 49

C.F.R. § 1180.8(c). To the extent applicable, the Operating Plan includes information regarding:

- (1) Traffic level density on lines proposed for joint operations;
- (2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis;
- (3) Operating economies, which include, but are not limited to, estimated savings; and
- (4) Any anticipated discontinuances or abandonments.

Id.

I. Pre-Transaction Operations

A. Train Operations

CSX currently operates one pair of through trains, Q620 (northbound) and Q621 (southbound), between Massena, NY and Selkirk, NY (south of Albany) by way of Dewitt Yard near Syracuse. Q620 and Q621 carry carload and intermodal traffic over the U.S. Massena Lines. Q620 operates daily, while Q621 operates six days a week.

CSX operates unit trains of military equipment and supplies for the U.S. Government between Fort Drum, NY and Dewitt Yard, near Syracuse, NY (for traffic moving to and from points east of Syracuse), and between Fort Drum, NY and Belle Isle Yard, near Solway, NY (for traffic moving to and from points west of Syracuse).

CSX also operates unit trains of corn and other grain products to Fulton Yard from Belle Isle Yard (for traffic moving from Midwest origins and other points west of Syracuse) or from Dewitt Yard (for traffic moving from origins east of Syracuse).

CSX operates a pair of transfer assignments (B798 and B799), each operating 6 days a week from Massena to Huntingdon, Quebec and back, carrying traffic interchanged with CNR at Huntingdon, Quebec.⁴ A transfer assignment is used to move cars between two points, and it is not used to serve customers.

CSX also operates transfer assignment B762 from Massena to Ste. Agnes, Quebec and back again, carrying intermodal and carload freight originating or terminating at CSX points in Canada. In Ste. Agnes, freight carried on B762 is handed off to or picked up from CSX transfer assignment B763, which operates wholly in Quebec from Beauharnois to Ste. Agnes and back. B763 currently stops at CSX's Valleyfield Intermodal Terminal at Valleyfield, Quebec to pick up and set out intermodal cars moving between Valleyfield and Ste. Agnes. CSX has notified customers that intermodal service on certain lanes, including those originating and terminating at Valleyfield, Quebec, will be discontinued on October 6, 2019. Pursuant to a separate intermodal agreement between the CN System and CSX that was announced August 8, 2019, intermodal traffic moving over the Massena Lines that is now carried north of Massena on B762 and B763 will, effective October 2019, be interchanged with CNR at Huntingdon, Quebec and carried by CNR to and from CNR's Montreal Intermodal Terminal at Taschereau Yard. (See Section I.C, below.)

In addition to the through trains and local transfer assignments described above, CSX currently operates the following four assignments on the U.S. Massena Lines:

- *Massena (assignment operates 5 days a week).* Operates out of Massena Yard; serves customers in Massena, Norwood, Potsdam, and Rooseveltown, NY; carries

⁴ CNR does not presently have its own line to Huntingdon, Quebec and reaches that point via CSX's track from Valleyfield, pursuant to operating rights granted by CSX for the sole purpose of interchanging with CSX at Huntingdon.

traffic interchanged with the New York and Ogdensburg Railroad (“NYOG”) at Norwood and the Massena Terminal Railroad (“MSTR”) at Massena.

- *Watertown (assignment operates 6 days a week).* Operates out of CSX’s Massey Yard in Watertown; serves customers at Gouverneur, Philadelphia, and Watertown, NY and on the Balmat Industrial Track and Carthage Branch; carries traffic interchanged with the Mohawk, Adirondack and Northern Railroad Company (“MWA”) at Carthage.
- *Fulton (assignment operates 6 days a week).* Operates out of CSX’s Fulton Yard; transfers traffic between Fulton Yard and CSX’s Dewitt Yard; serves customers on the Fulton Subdivision at Fulton and Oswego, NY.
- *Woodard (assignment operates 5 days a week).* Operates out of Woodard; serves customers at Liverpool, Phoenix, and Woodard, NY.

B. Yards

CSX operates three freight yards on the U.S. Massena Lines: Massena Yard in Massena, Massey Yard in Watertown, and Fulton Yard in Fulton. CSX currently moves existing cars, including overhead traffic and traffic from or to customers located on the U.S. Massena Lines, through its Dewitt Yard and Belle Isle Yard.

C. Intermodal Service

As noted above, the CN System and CSX have announced a new joint intermodal service, beginning in October 2019, between the U.S. East Coast and CN-served areas in greater Montreal and Southern Ontario. This new interline service, which is separate from and independent of the Massena Lines acquisition, is effective early October, and offered regardless of whether the Transaction is consummated. Until consummation of the Transaction, CSX will interchange new expedited intermodal traffic moving to and from Montreal, Quebec with CNR at Huntingdon, Quebec.⁵ Before consummation of the Transaction, CSX plans to include

⁵ Intermodal traffic between the U.S. East Coast and Toronto will be interchanged with CNR at CSX’s Frontier Yard in Buffalo and will not move over the Massena Lines.

intermodal traffic moving over the Massena Lines for interchange at Huntingdon, Quebec in CSX's existing trains Q620 and Q621.

II. Post-Transaction Operations

B&LE plans minimal changes in rail operations as a result of consummation of the Transaction. The principal changes, described below, will be the relocation of the interchange point for CN System-CSX interline traffic, as well as some modifications to train operations on the U.S. Massena Lines.

Following full implementation of the Transaction, the U.S. Massena Lines will be dispatched from CN's dispatching center in Homewood, Illinois.

A. Changes to CN System-CSX Interchange Location

After the CN System's acquisition of the Massena Lines from CSX, the location of the interchange between B&LE and CSX will be established at Woodard, NY, where the ends of each railroad will meet. This interchange will replace the current interchange between the CN System and CSX at Huntingdon, Quebec. Although B&LE's interchange with CSX will be at Woodard for revenue purposes, there are not adequate facilities at that location for physically interchanging traffic, nor could such facilities easily be added. B&LE will therefore physically interchange traffic at CSX's Belle Isle Yard (near Solvay, NY) and CSX's Dewitt Yard (near Syracuse), which have facilities and capacity available for that purpose.⁶ B&LE trains will operate between the U.S. Massena Lines and these CSX yards pursuant to operating rights

⁶ Interline manifest freight, intermodal traffic, and military trains moving between Fort Drum and points east of Syracuse will be physically interchanged between B&LE and CSX at CSX's Dewitt Yard. Unit trains originating or terminating on the Fulton Subdivision and military trains moving between Fort Drum and points west of Syracuse will be physically interchanged at CSX's Belle Isle Yard.

granted by CSX as part of the interchange agreement between B&LE and CSX. Exhibit 1-Map E shows the approximate location CSX's Dewitt Yard and CSX's Belle Isle Yard.

B. Changes to Train Operations.

Following consummation of the Transaction, the CN System will operate one pair of through trains (M327 southbound and M326 northbound) per day between Taschereau Yard (in Montreal) and Woodard, NY, with physical interchange occurring in Dewitt Yard (near Syracuse). These trains will replace the CSX Q621 and Q620 trains between Massena and Dewitt Yard, as well as the CSX B798 and B799 transfer assignments now operating between Massena, NY and Huntingdon, Quebec and the B762 transfer assignment now operating between Massena and Ste. Agnes. This will make train operations more efficient overall, as elimination of the B798 and B799 transfer assignments will eliminate the waiting time currently required on CSX to coordinate scheduling of the crews for B798 and B799, thereby reducing total estimated transit time by approximately 24 hours.

CN System trains M327 and M326 are expected to initially carry mixed manifest and intermodal traffic. They will set out and pick up cars at Massena, Watertown, and Woodard. Crews on M327 and M326 will be changed at Massena Yard. B&LE's U.S. crews will operate in the United States. CNR's Canadian crews will operate in Canada except to cross the border to change crews at Massena Yard, as was the practice between 1989 and 2004, when CNR ceased operating trains south to Massena Yard for physical interchange.

As discussed above, effective October 2019, the CN System and CSX are offering a new expedited interline intermodal service, unrelated to the Transaction, between CNR terminals serving the Montreal and Southern Ontario areas and the CSX-served ports of Philadelphia and New York/New Jersey as well as the New York metropolitan area. Immediately following

consummation of the Transaction, intermodal traffic moving to and from Montreal will be handled on CN System trains M326 and M327. If sufficient demand for this CN System-CSX interline expedited intermodal service develops at a later time, new intermodal trains will operate between Montreal and the new interchange with CSX at Woodard, NY, but these trains would constitute organic rather than Transaction-related traffic growth.

B&LE will operate the current unit trains of military equipment and supplies for the U.S. Government between Fort Drum and the appropriate interchange location (i.e., CSX's Dewitt Yard for traffic moving on CSX to or from points east of Syracuse or Belle Isle Yard for traffic moving on CSX to or from points west of Syracuse).

B&LE plans to operate assignments serving local customers on the U.S. Massena Lines based in Massena, Watertown, Fulton, and Woodard. B&LE will work with customers on the U.S. Massena Lines to understand their rail service needs, develop efficient plans for rail operations to their facilities, and help them grow their future businesses. B&LE is prepared to provide service to new local customers that may locate on the U.S. Massena Lines in the future. The frequency and pattern of operations of the local switchers may change in the future in response to changes in customer demand. B&LE will communicate directly with each customer regarding its operations for each facility.

The current interchange locations with MHLA at Carthage, NYOG at Norwood, and with MSTR at Massena will continue to be used after the consummation of the Transaction.

The CN System's ownership of the Massena Lines will enable it to coordinate its maintenance schedule and capital investment in a way that best supports the flow of traffic over the lines. The CN System has no current plans to construct any additional sidings or connections to integrate the U.S. Massena Lines.

Approximately {{[REDACTED]}}⁷ loaded cars of poison-by-inhalation hazardous materials (“PIH”) traffic originating in Canada moved over the St. Lawrence Subdivision between the U.S./Canada border and Syracuse in 2018. CSX previously installed positive train control (“PTC”) on the St. Lawrence Subdivision. CSX has agreed to provide certain PTC transition services on the St. Lawrence Subdivision after B&LE’s acquisition of the Massena Lines. This will enable the current PTC system to continue in operation consistent with the Federal Railroad Administration’s (“FRA”) regulations while CN evaluates the small number of loaded PIH cars on the St. Lawrence Subdivision and engages with FRA regarding PTC on the St. Lawrence Subdivision given the unique circumstances of the line. CN plans to utilize CSX’s PTC transition services until FRA determines whether the St. Lawrence Subdivision qualifies for a *de minimis* or other exception, and the line segment is transferred from the CSX’s PTC implementation plan to CN’s PTC implementation plan.

The following table shows the estimated number of trains on the U.S. Massena Lines before and after the Transaction, reflecting the changes in train operations described above. B&LE estimates that, after the Transaction, the number of trains between Fort Covington and Massena, NY will decrease. The number of trains on the other segments of the U.S. Massena Lines is not expected to change because of the Transaction. In the years to come, there may be some minor increases in traffic, as a result of organic growth unrelated to the Transaction. Whether, where, and how much such organic growth may occur, however, is not reasonably foreseeable. For these reasons, no projected organic growth is included in the following table.

⁷ Material designated as Highly Confidential under B&LE’s proposed protective order and redacted are set off with double brackets (i.e., “{{ }}”).

Table 1.

**Transaction-Related Changes in Rail Traffic: Base Case vs. Post-Transaction
(Trains/Day)
US Line Segments to be Acquired by B&LE**

<i>Rail Line Segment</i>	<i>Between</i>	<i>Pre-Transaction Traffic (Trains/day)</i>	<i>Post-Transaction Traffic (Trains/day)</i>	<i>Change in Number of Trains After Transaction (decrease is indicated by parentheses)</i>
1	Fort Covington, NY – Massena, NY	6	2	(4)
2	Massena, NY – Watertown, NY	4	4	0
3	Watertown, NY – Woodard, NY	6	6	0
4	Woodard, NY – Fulton, NY	2	2	0
5	Fulton, NY – Oswego, NY	<1	<1	0
6	Philadelphia, NY – Carthage, NY	<1	<1	0
7	Helena, NY – Roosevelt, NY	<1	<1	0
8	Gouverneur, NY – Balmat, NY	<1	<1	0

C. Changes to Yard Operations.

B&LE does not anticipate significant changes to operations at Fulton Yard or Massey Yard as a result of the Transaction. Switching activity at Massena Yard is expected to decline because of the elimination of train-to-train connections between current CSX trains B798, B763, and Q621 and between Q620 and B799.

After the Transaction, B&LE will interchange cars with CSX at Dewitt Yard and Belle Isle Yard, the two yards where existing traffic currently moves today.

Upon Closing, B&LE has no plans for construction of any additional yard tracks to implement the Transaction.

D. Maintenance and Capital Investment.

B&LE plans to maintain the St. Lawrence Subdivision mainline to its present Class 3 FRA track classification. B&LE plans to invest approximately {{[REDACTED]}} for track work (such as surface, ballast, and crossings) over the first three years after closing and approximately {{[REDACTED]}} for bridge and structural work during the first five years after closing. B&LE also plans to spend approximately {{[REDACTED]}} for equipment, inspection vehicles, and tools that will be needed on the property after consummating the Transaction. These investment plans are consistent with the CN System's robust capital program, pursuant to which more than \$750 million of capital investments are being made in the United States in 2019.

E. Impacts on Commuter and Other Passenger Rail Service.

The Transaction will have no impact on commuter or other passenger rail service, because no such services are provided on the U.S. Massena Lines, nor have there been any such services on those Lines since at least the establishment of Amtrak in 1971.

F. Abandonments and Discontinuances.

CN does not plan to abandon or discontinue service on rail lines in the United States as a result of the Transaction. Before closing, CNR plans to seek formal discontinuance of its inactive 1989 trackage rights on the St. Lawrence Subdivision between Fort Covington and

Massena under the Board's class exemption at 49 C.F.R. § 1152.50 for trackage rights that have not been utilized within the last two years.

III. Labor Impacts.

The effects of the Transaction on employees are summarized in the Labor Impact Exhibit attached as Attachment A to this Operating Plan.

No current CN employees will be adversely affected by the Transaction. B&LE does not have employees in New York and will be hiring employees to operate the U.S. Massena Lines upon closing of the Transaction. B&LE estimates that it will hire 53 new employees in New York (identified as "Jobs to be Created" in the Labor Impact Exhibit) to operate the U.S. Massena Lines. Those employees will include 41 employees in the crafts of Carman, Communications, Engineer, Signalman, Trainman, and Maintenance of Way. B&LE also estimates that it will hire 12 managers in New York in the departments of Transportation, Engineering, and Mechanical. For new employees, B&LE plans to offer priority hiring consideration to CSX employees working on the U.S. Massena Lines in New York.

CSX currently employs 50 employees on the U.S. Massena Lines in the crafts of Carman, Communications, Engineer, Signalman, Trainman, and Maintenance of Way. Those employees are identified in the "Jobs to be Abolished" in the Labor Impact Exhibit.

Employees adversely affected by the Transaction will be entitled to the benefits of employee protective conditions as imposed by the Board under *New York Dock Ry.—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979), as modified by *Wilmington Terminal R.R.—Purchase & Lease—CSX Transportation, Inc.*, 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor*

Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991), in addition to any rights they may have under their collective bargaining agreements.

OPERATING PLAN
Attachment A
Labor Impact Exhibit

CSX (Jobs to Be Abolished)						
Craft or Class	Location					
	Fulton	Little Falls	Massena	Syracuse	Watertown	Grand Total
Carman	0	0	2	0	1	3
Communications	0	0	0	0	1	1
Engineer	0	0	8	0	2	10
Signalman	0	1	1	0	2	4
Trainman	0	0	10	2	2	14
MOW	4	0	8	0	6	18
Craft Total	4	1	29	2	14	50

B&LE (Jobs to Be Created)					
Craft or Class	Location				
	Fulton	Massena	Syracuse	Watertown	Grand Total
Carman	0	2	0	1	3
Communications	0	0	0	2	2
Engineer	0	5	2	2	9
Signalman	0	3	0	3	6
Trainman	0	5	2	2	9
MOW	2	6	0	4	12
Craft Total	2	21	4	14	41
Management-Transportation	0	1	0	1	2
Management-Engineering	2	5	0	2	9
Management-Mechanical	0	0	0	1	1
Management Total	2	6	0	4	12
GRAND TOTAL	4	27	4	18	53

NOTE: All labor impacts above are expected to occur within the first year after consummation.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY

— ACQUISITION AND OPERATION —

**CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
OSWEGO, JEFFERSON, SAINT LAWRENCE, AND FRANKLIN COUNTIES, NEW
YORK**

**APPLICATION FOR A
MINOR TRANSACTION**

**VERIFIED STATEMENT
OF
JANET DRYSDALE**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY

— ACQUISITION AND OPERATION —

**CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
OSWEGO, JEFFERSON, SAINT LAWRENCE, AND FRANKLIN COUNTIES, NEW
YORK**

**VERIFIED STATEMENT
OF
JANET DRYSDALE**

My name is Janet Drysdale. I am Vice-President, Financial Planning for Canadian National Railway Company (“CNR”).¹ My office is in Montreal, Quebec. I have worked for CNR since 1996 in a variety of positions, including Vice-President Corporate Development and Sustainability (2016-2017), Vice-President Corporate Development (2016), and Vice-President, Investor Relations (2012-2016), and before then in positions within Sales and Marketing, Investor Relations, and Financial and Strategic Planning. I have occupied my present position since July 2018. My present areas of responsibility include financial management and strategic

¹ Abbreviations in this Verified Statement, if not otherwise defined, have the meanings given in the Table of Abbreviations found at pages iv-v of the Application.

planning, including oversight of the CN System's² operating and capital budgets, financial planning and forecasting, and profitability analysis, as well as acquisitions and integration.

I am submitting this statement in support of the minor application of B&LE, an indirect rail carrier subsidiary of CNR. B&LE seeks authority from the Surface Transportation Board (the "Board") for B&LE's acquisition from CSX Transportation, Inc. ("CSX") of certain rail lines and property for its operation of those lines in the United States. As explained below, CNR and B&LE seek to acquire approximately 278.1 miles of CSX's rail lines (including branch lines) between Woodard, NY (north of Syracuse) and Beauharnois, Quebec, together with certain ancillary properties (collectively, the "Massena Lines"). B&LE is requesting Board approval for the acquisition and operation of those portions of the Massena Lines (approximately 236.3 miles) that are located in the United States ("U.S. Massena Lines") and thus subject to the Board's regulatory jurisdiction (the "Transaction").³ The purchase of the Massena Lines by CNR and B&LE is an end-to-end acquisition and will assure the continued efficient movement of overhead interline traffic between the CN System and CSX over those lines, as well as to enable B&LE to provide rail service to local customers on the U.S. Massena Lines. B&LE looks forward after Closing to providing safe and effective rail service on the U.S. Massena Lines.

As explained below, the Transaction will have no anticompetitive effects. It will not reduce the number of current competitive rail alternatives for customers.

² "CN System" refers to the rail system operated by CNR in Canada and by CNR's rail operating subsidiaries in the United States, including the Bessemer and Lake Erie Railroad Company ("B&LE").

³ The portion of the Massena Lines in Canada is being acquired by CNR.

Moreover, even if the Transaction were to result in anticompetitive effects (which it would not), any such effects would be outweighed by the Transaction's anticipated contribution to the public interest in meeting significant rail transportation needs, as further explained below.

I. PURPOSE AND DESCRIPTION OF THE TRANSACTION

In June 2018, CSX announced that it was rationalizing its system by selling lines in the U.S. and Canada, including the Massena Lines. The Massena Lines, which cross the U.S.-Canada border at Fort Covington, NY, provide the only direct connection and gateway east of Buffalo, NY for traffic interchanged between the CN System and CSX.

After CSX announced it was selling the Massena Lines, CNR determined that it was important to preserve a direct connection of the CN System with CSX for overhead traffic through that gateway over the Massena Lines. CNR did not want an additional railroad to operate over the Massena Lines as a bridge carrier between the CN System and CSX. Inserting an additional railroad into that CN System-CSX joint route would reduce operating efficiency, increase costs, and increase transit times by adding another interchange and requiring coordination with and participation of a third carrier in addition to the CN System and CSX, to the detriment of existing interline customers of the CN System and of CSX that move overhead traffic over the U.S. Massena Lines. CNR also did not want overhead traffic currently moving over the Massena Lines instead to be transported to the next-closest direct gateway between the CN System and CSX for that movement. If current overhead traffic now moving over the Massena Lines needed to be routed over an alternative direct CN System-CSX gateway, that routing would likely be a longer and less efficient route than the current route, with increased transit times and higher costs for traffic moving between the U.S. East Coast points and the Canadian provinces of Quebec, New Brunswick, and Nova Scotia. Neither of these alternatives

would be beneficial for existing interline customers of the CN System and of CSX whose overhead traffic moves over the U.S. Massena Lines. The CN System wanted to remain competitive for those customers currently moving traffic between the CN System and CSX over the Massena Lines. In addition to preserving the gateway between the CN System and CSX over the U.S. Massena Lines, this end-to-end acquisition would move the interchange point from Huntingdon, Quebec to Woodard, NY, extending the length of the CN System's haul for overhead traffic and enabling B&LE to provide service to rail customers located on the U.S. Massena Lines. Accordingly, CNR submitted a proposal to CSX for the purchase of the Massena Lines, leading to the Transaction.

Under the PSA, CNR and B&LE will acquire the Massena Lines. After the acquisition, the CN System will interchange freight with CSX at Woodard, NY (north of Syracuse, NY), rather than at Huntingdon, Quebec, as at present.⁴ In addition, the acquisition of the U.S. Massena Lines will give B&LE direct connections with three short line railroads: (1) MHW at Carthage, NY; (2) New York and Ogdensburg Railway Company, Inc. ("NYOG") at Norwood, NY; and (3) the Massena Terminal Railroad Company ("MSTR") at Massena, NY.

⁴ The interchange point for revenue purposes will be Woodard, NY, which is the southern end of the line being acquired by B&LE. However, there are not adequate facilities for physically interchanging traffic at that location. For purposes of efficiency and convenience, B&LE and CSX will physically interchange interline traffic at CSX's Dewitt Yard near Syracuse or its Belle Isle Yard near Solvay, NY, which have available facilities and capacity to handle the interchange of rail traffic between B&LE and CSX. Exhibit 1-Map E shows the approximate location of CSX's Dewitt Yard and CSX's Belle Isle Yard. B&LE trains will operate between Woodard, NY and these CSX yards pursuant to operating rights granted by CSX as part of the interchange agreement between B&LE and CSX. Currently, before the Transaction, CSX moves existing overhead traffic and traffic from and to customer facilities located on the U.S. Massena Lines via CSX's Dewitt Yard and Belle Isle Yard.

II. B&LE'S ACQUISITION WILL HAVE NO ANTICOMPETITIVE EFFECTS

As described below, the Transaction contributes to the public interest in meeting significant transportation needs. The Transaction is an end-to-end line sale that would maintain the competitive status quo. A principal effect of B&LE's acquisition of the U.S. Massena Lines would be to move the interchange point for the CN System and CSX from Huntingdon, Quebec, to Woodard, NY (north of Syracuse), extending the length of the CN System's haul and shifting to B&LE the common carrier obligation to provide service to local rail customers on the U.S. Massena Lines. CN and CSX have little or no network overlap in the United States in the vicinity of the U.S. Massena Lines today. As CN has no parallel line in New York to the U.S. Massena Lines, the Transaction will not render other trackage duplicative or redundant. Today, the CN System and CSX meet end-to-end in southern Quebec; after the Transaction, they will meet end-to-end in Woodard, NY.

The Transaction will maintain an efficient gateway between the CN System and CSX over the Massena Lines, without an added interchange with an intermediate third rail carrier, as would be the case if another carrier were to purchase the Massena Lines from CSX. That, in turn, will preserve existing competition over the U.S. Massena Lines for rail transportation to and from the Northeastern United States. This will enable the CN System and CSX to continue to provide efficient interline rail service to customers shipping between U.S. East Coast points and locations in the Canadian provinces of Quebec, New Brunswick, and Nova Scotia.

After the transaction, local customers located on the U.S. Massena Lines will continue to be served by one rail carrier. Those customers are now exclusively served by CSX, and they will be exclusively served by B&LE following the Transaction. Because CSX is the only rail carrier currently providing rail service on the U.S. Massena Lines today, there are no 2-to-1 or 3-to-2

customers (that is, customers for whom the Transaction would reduce the number of meaningful direct rail competitive alternatives from 2 to 1 or from 3 to 2).

During the course of preparing the Application, I became aware of inactive CNR trackage rights over CSX between Fort Covington and Massena, NY. CNR did not use, and could not have used, those trackage rights to compete with CSX for customers located on the line between Fort Covington and Massena, and indeed has conducted no operations pursuant to those trackage rights for at least the last 14 years. These trackage rights were acquired in 1989 when Consolidated Rail Corporation (“Conrail”) granted them to CNR in connection with Conrail’s purchase of what until then was CNR’s line between Huntingdon, Quebec and Massena, NY. Before purchasing the line Conrail had trackage rights over that segment as part of Conrail’s route between Syracuse, NY and Montreal, Quebec. In 1989, CNR sold the Huntingdon-Massena segment to Conrail. As part of the 1989 line sale, CNR retained certain limited trackage rights to directly and exclusively serve “present industries [as of 1989] and their successors” on the U.S. Massena Lines between Fort Covington near the border and Massena, NY. Conrail, alternatively, obtained the exclusive right to directly serve new industries. Each industry on this segment was thus assured of direct service by a single carrier, but not by more than one carrier. When Conrail was subsequently acquired and its assets divided between CSX and Norfolk Southern Railway Company, the Huntingdon-Massena segment, along with the rest of the Conrail Montreal Line, was transferred to CSX.

CNR’s retained 1989 trackage rights also permitted CNR to interchange with MSTR at Massena, NY. But CNR has neither operated to Massena nor conducted any interchange with MSTR for at least the last 14 years. The long-inactive interchange between CNR and MSTR at Massena could not be reasonably viewed as providing any effective form of competitive

constraint on CSX for MSTR-interchanged traffic. The substitution of B&LE for CSX as the owner of the U.S. Massena Lines will effectuate no meaningful change in the interchange and handling of traffic with MSTR at Massena.

Further, in the past four and a half years, CSX has not moved any traffic between its connection with MSTR and any point on the St. Lawrence Subdivision between Fort Covington and Massena that CNR was eligible to serve under the inactive 1989 trackage rights. Nor has CSX handled any MSTR traffic to Huntingdon for interchange with CNR. Indeed, virtually all traffic that MSTR interchanged with CSX during that period moved south of Massena on the U.S. Massena Lines.⁵

Attachment A shows inbound and outbound cars over MSTR at Massena from 2015 through mid-September of 2019. As shown, the majority of the inbound traffic originated in {{[REDACTED]}}⁶ on CSX and was destined for {{[REDACTED]}}

Aside from traffic originating in {{[REDACTED]}} other inbound traffic to {{[REDACTED]}} originated at facilities in Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, Texas, and Mexico served by CSX or a CSX connecting carrier and not directly served by CN. Outbound traffic originated at {{[REDACTED]}} on the MSTR and was transported either by CSX direct or by CSX and a CSX interchange partner to destinations in Arkansas, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, New York, Ohio,

⁵ The one exception is eight cars in 2015 that originated north of Massena on the Rooseveltown Industrial Track -- traffic which CNR was not eligible to move. The Rooseveltown Industrial Track was historically owned by Conrail, was not part of the 1989 sale, and has never been owned by CNR. Thus, customers located on the Rooseveltown Industrial Track were not covered by the inactive 1989 trackage rights agreement.

⁶ Material designated as Highly Confidential under B&LE's proposed protective order and redacted are set off with double brackets (i.e., "{{[REDACTED]}}").

Pennsylvania, Tennessee, Texas, or Mexico. With the exception of a spot movement of {{[REDACTED]}} cars in late 2018 and early 2019 to a CN-served facility in Detroit, these outbound moves are to facilities that are directly served by CSX or another carrier and not by CN. Given these circumstances, the CN System could not have effectively competed for the movement of MSTR traffic via CNR's inactive trackage rights through the Province of Quebec. The Transaction would not reduce any meaningful competition for traffic interchanged with MSTR. This is illustrated by the strong support for B&LE's acquisition of the U.S. Massena Lines by MSTR and its primary customer, Alcoa.

The Transaction would also cause no reduction in the number of transloading or intermodal service options. CSX offers intermodal and transloading service to customers with those capabilities in the vicinity of the U.S. Massena Lines and beyond in New York. For example, CSX has an intermodal yard at Dewitt Yard; intermodal facilities in Buffalo and Albany, NY; and a transloading terminal in Syracuse through its subsidiary, TRANSFLO. Given the continuing proximity of CSX's intermodal and transloading facilities to the U.S. Massena Lines, CSX will remain a viable competitive alternative option for direct-rail customers with an ability to utilize such intermodal or transloading services.

III. B&LE'S ACQUISITION AND OPERATION OF THE U.S. MASSENA LINES WILL PRESERVE RAIL TRANSPORTATION OPTIONS

CNR and B&LE are seeking to acquire the Massena Lines to preserve the CN System's direct connection and gateway with CSX for interline traffic over those lines. In effect, the Transaction will result in moving the CN System-CSX interchange from Huntingdon, Quebec to Woodard, NY. More than 45% of the current carload traffic on the U.S. Massena Lines is overhead traffic exchanged between the CN System and CSX, for which the Massena Lines provide a direct connection and gateway. Acquisition of the U.S. Massena Lines by B&LE will

ensure that current traffic using the U.S. Massena Lines will continue to move directly between the two railroad systems, which is the most efficient way to minimize transit time and avoid delays that would occur during interchange to an unknown intervening bridge carrier. If a railroad outside of the CN System acquired the U.S. Massena Lines, an additional railroad would operate as a bridge carrier between the CN System and CSX, adding another interchange and requiring coordination with and participation of a third carrier. This would reduce operating efficiency, increase costs, and lengthen transit times. To avoid the additional interchange that would be required if a third carrier acquired the U.S. Massena Lines, the CN System and CSX could seek to use an alternative gateway for overhead CN System-CSX traffic now moving over the Massena Lines. Doing so could use a more circuitous route through the next-closest CN System-CSX gateway, which could add mileage, transit time, and crew and locomotive costs, and would increase inefficiencies to the movement. Either of these alternatives could make the current overhead traffic moving between the CN System and CSX over the Massena Lines less competitive as compared to other transportation options.

For example, if existing northbound traffic on the Massena Lines originating on the U.S. eastern seaboard and destined for Montreal had to be instead routed through the CN System-CSX gateway in Buffalo, NY (i.e., the next-closest gateway), it would take the traffic several hundred miles out of route (i.e., west) before moving back east towards Montreal (see Application, Exhibit 1, Map D). The additional miles, transit time, and operating costs associated with such an alternate route would make it more difficult for the CN System and CSX to offer joint-line service that could compete effectively with other transportation alternatives.

By contrast, the proposed Transaction enables the CN System-CSX routing over the Massena Lines to remain a competitive option for current overhead interline customers between

U.S. East Coast points and locations in the Canadian provinces of Quebec, New Brunswick, and Nova Scotia. After Closing, the efficiency of current rail operations on the U.S. Massena Lines will not be reduced. Indeed, the Transaction will provide B&LE with opportunities to improve the efficiencies of those operations, as described in the Operating Plan. For example, the CN System will operate one pair of through trains per day between Taschereau Yard (in Montreal) and Woodard, NY for interchange with CSX. This pair will replace two CSX trains now operating between Massena and Dewitt Yard, as well as two CSX transfer assignments now operating between Massena and Huntingdon. This will improve operating efficiencies overall, reducing total transit time by approximately 24 hours, because eliminating these two transfer assignments avoids delays that result from coordinating crew schedules for those trains. (*See* Application Exhibit 15 (Operating Plan) § II.B.) Also, eliminating these CSX train-to-CSX train connections will reduce switching activity at the Massena Yard. (*See id.* § II.C.) These improvements will benefit customers with overhead traffic that is currently interchanged in Huntingdon, Quebec.

B&LE also plans to work with individual local customers on the U.S. Massena Lines to understand and identify their rail service needs, develop efficient plans for rail operations to their facilities, and help them grow their future businesses.

B&LE will maintain the U.S. Massena Lines to CN's standards for track in the United States. B&LE will maintain track to current FRA track class standards, including maintaining St. Lawrence Subdivision mainline between Fort Covington and Woodard to FRA Class 3 standards. To ensure that the U.S. Massena Lines conform to those standards, B&LE plans to spend approximately {{[REDACTED]}} for track work (such as surface, ballast, and crossings) over the first three years after Closing and approximately {{[REDACTED]}} for bridge and

structural work during the first five years after Closing. B&LE also plans to spend approximately {{[REDACTED]}} for equipment, inspection vehicles, and tools that will be needed on the property after consummating the Transaction. These investment plans are consistent with the CN System's robust overall capital program, under which more than \$750 million of capital investments are being made in the United States in 2019.

IV. THE TRANSACTION WOULD HAVE NO SIGNIFICANT EFFECTS ON THE ENVIRONMENT

As discussed in the Operating Plan, B&LE does not expect an increase in the number of trains operating on the U.S. Massena Lines as a result of the Transaction. The Transaction is intended primarily to preserve service on the Massena Lines for existing traffic, rather than to divert traffic from other routes or to generate new traffic. As explained in the Operating Plan, B&LE estimates that the number of trains between Fort Covington and Massena, NY will result in an overall decrease of four trains a day, due to the elimination of transfer assignments north of Massena, and that there will be no Transaction-related change in the number of trains on other segments of the U.S. Massena Lines. As further explained in the Operating Plan, B&LE anticipates no increases in yard activity as a result of the Transaction, and expects yard activity at Massena Yard to decline as a result of the elimination of existing train-to-train connections at Massena. Accordingly, B&LE expects that the Transaction will not result in increases in the number of trains, rail yard activity, or highway traffic that would exceed the Board's thresholds for environmental analysis. (See Operating Plan (Exhibit 15 to the Application).)

In addition, B&LE is not planning to construct any new sidings, connections, or yard tracks to implement the Operating Plan after Closing. There will therefore be no Transaction-related impacts on wetlands or other water resources, endangered or threatened species, or land use.

CONCLUSION

B&LE's acquisition and operation of the U.S. Massena Lines would have no adverse impacts on rail competition, will enable B&LE to provide the rail transportation services currently provided on the U.S. Massena Lines to local and overhead customers, and will assure the continued efficient movement of overhead interline traffic between CSX and the CN System over those lines. Thus, even if the Transaction had any anticompetitive effects (which it will not), those effects would clearly be outweighed by the Transaction's contribution to the public interest in meeting significant transportation needs. B&LE therefore requests the Board to approve B&LE's acquisition and operation of the U.S. Massena Lines.

Attachment A to Verified Statement of Janet Drysdale
PUBLIC VERSION

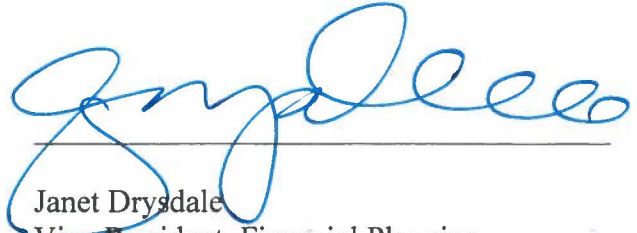
CSXT Traffic Interchanged with MSTR - 2015 to September 2019

<u>Customer</u>	<u>Commodity</u>	<u>Origin</u>	<u>Destination</u>	<u>CSXT Direct (On Road/Off Road)</u>	<u>Cars</u>				
					<u>2019*</u>	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>

REDACTED

VERIFICATION

I, Janet Drysdale, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on October 10, 2019.

A handwritten signature in blue ink, appearing to read 'Janet Drysdale', is written over a horizontal line.

Janet Drysdale
Vice-President, Financial Planning
Canadian National Railway Company

Letters of Support



Alcoa Canada Cie

1 Place Ville Marie, Bureau 2310
Montréal (Québec) H3B 3M5
Canada

September 20th, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Bessemer & Lake Erie R.R.—Acquisition & Operation—Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, New York (STB Docket No. FD 36347)*

Dear Ms. Brown:

Alcoa U.S.A. Corp. (Alcoa) supports the application of Bessemer and Lake Erie Railroad Company ("B&LE") to acquire and operate the U.S. portion of CSX Transportation, Inc.'s ("CSX") Massena Lines, located between Fort Covington near the U.S./Canada border and Woodard, New York near Syracuse (the "U.S. Massena Lines").

Alcoa operates an aluminum smelter in Massena, New York that is served exclusively by The Massena Terminal Railroad Company ("MSTR"). MSTR is a switching carrier that was previously owned by Alcoa, but today is a subsidiary of Genesee & Wyoming Inc. MSTR interchanges traffic with CSX at Massena, where MSTR and the U.S. Massena Lines connect.

The U.S. Massena Lines are used by Alcoa to transport raw materials needed to make aluminum (alumina and petroleum coke) to the Massena plant. Alcoa depends on cost-effective, reliable rail transportation to bring these materials to the site.

CSX is currently the only outlet to the North American rail network for Alcoa's Massena facility. While Alcoa understands that the Canadian National Railway (CNR) historically owned the segment of the Massena Lines north of Massena to the Canadian border (not part of the U.S. Massena Lines) and previously operated to Massena on those lines, any former interchange between MSTR and CNR has been inactive for many years.

We anticipate that B&LE's proposed acquisition of the U.S. Massena Lines will help ensure that our Massena site remains competitive in a global commodity market. Current rail transportation costs of raw materials to our site are cost-prohibitive, and given our long-standing relationship with the CNR in Canada and the CNR's ownership of B&LE, we anticipate that B&LE's ownership of the U.S. Massena Lines will help ensure that we receive competitive rates that will help secure the future of our Massena site in the north country of New York.



Alcoa Canada Cie

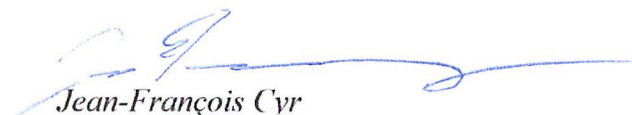
1 Place Ville Marie, Bureau 2310
Montréal (Québec) H3B 3M5
Canada

We have an important interest in effective and cost-competitive rail service over the U.S. Massena Lines. After the transaction, we will retain access to locations on the CSX network through coordinated CNR-CSX service via interchange at Woodard/Syracuse, New York. We depend upon the U.S. Massena Lines and want the future of those lines to be secure and cost competitive. B&LE's acquisition of the U.S. Massena Lines eliminates the uncertainty that those lines faced when CSX announced that they were for sale. Alcoa expects the acquisition by B&LE and the integration of the Massena Lines into the larger CNR system to proceed smoothly and rapidly due to its end-to-end nature.

Alcoa has not identified any negative impacts on competition as a result of the proposed acquisition by B&LE. Alcoa views this transaction as a substitution of the CNR for CSX as MSTR's interchange carrier at Massena. That substitution does not reduce Alcoa's competitive options or create increased market power for the line-haul carrier on the U.S. Massena Lines.

We believe the proposed acquisition will provide benefits to Alcoa, helping to ensure the competitiveness of our Massena smelter. We therefore strongly support B&LE's application and urge its approval by the Board.

Very truly yours,



Jean-François Cyr
VP Operations Americas,
President Alcoa Canada



a Genesee & Wyoming Company

September 27, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Re: *Bessemer & Lake Erie R.R.—Acquisition & Operation—
Certain Rail Lines of CSX Transportation, Inc. in Onondaga,
Oswego, Jefferson, Saint Lawrence, and Franklin Counties,
New York (STB Docket No. FD 36347)***

Dear Ms. Brown:

The Massena Terminal Railroad Company (MSTR) is writing in support of the application of Bessemer and Lake Erie Railroad Company (B&LE or CN) to acquire the U.S. portion of CSX Transportation, Inc.'s ("CSX") Massena Lines, located between the U.S./Canada border and Woodard, New York, near Syracuse.

MSTR is a short line railroad that connects to the Massena Lines at Massena, NY, where it currently interchanges traffic with CSX. It serves two active rail customers, both located at Massena. MSTR's customers depend on efficient rail transportation to bring inputs into their plants and to move their products to market.

CSX is currently the only outlet to the North American rail network for MSTR and its customers. A former interchange between MSTR and Canadian National Railway (CNR) has been inactive since at least 2005, and is not and has not been a realistic competitive factor for MSTR for many years. Indeed, no MSTR traffic has moved north via CSX to the existing CSX-CNR interchange at Huntington, Quebec since at least prior to 2015.

CN's proposed acquisition of the Massena Lines will benefit MSTR. MSTR has an important interest in effective rail service over the Massena Lines to interchange with CSX at Syracuse/Woodard and access beyond to the CSX network. CN's acquisition eliminates uncertainty facing the future of the Massena Lines that arose when the lines were put up for sale. MSTR depends upon the Massena Lines and is glad that the future of those lines is secure. MSTR's parent company, Genesee & Wyoming Inc., has subsidiaries that interchange with CN elsewhere in the US and has

had productive relationships with CN. MSTR expects the acquisition and integration of the Massena Lines into the CN system to proceed smoothly and rapidly due to its end-to-end nature.

MSTR sees no competitive issues with the proposed transaction. The transaction involves an end-to-end acquisition, and simply results in a substitution of CN for CSX as MSTR's interchange carrier at Massena.

The proposed acquisition will preserve and strengthen rail service that is important to MSTR. We therefore strongly support B&LE's application and urge its approval by the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Wagner', with a long horizontal flourish extending to the right.

Leonard M. Wagner
President

Congress of the United States
Washington, DC 20515

October 2, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Bessemer & Lake Erie R.R.—Acquisition & Operation—Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, New York (STB Docket No. FD 36347)*

Dear Ms. Brown:

We are writing in support of the Bessemer and Lake Erie Railroad Company's ("B&LE") request to the Surface Transportation Board (STB) for authority to acquire and to operate the portion of the Massena Lines in the United States.

As Members of the New York Congressional Delegation we are committed to facilitating new solutions for safe and reliable transportation for our constituents. Freight railroads play a vital role in connecting U.S. businesses, large and small, to markets around the world. They are the lifeblood for many of the communities we represent in Congress.

According to the application submitted by B&LE, operating as CN, its proposed acquisition of the U.S. Massena Lines will preserve the competitiveness of the Massena Lines route. Moreover, the addition of CN to New York will bring a third Class I freight railroad to the state, offering enhanced competition and new service opportunities.

We support this proposed acquisition and believe New York will benefit from its adoption. We respectfully ask the Board to give B&LE's request its full and fair consideration, consistent with applicable statutes and regulations. Thank you for your time and consideration.

Sincerely,



John Katko
Member of Congress



Elise M. Stefanik
Member of Congress