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ENTERED
Office of Proceedings
May 2, 2025
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Public Record

May 2, 2025

VIA STB E-FILING PORTAL

Surface Transportation Board
Office of Proceedings
Section of Administration
395 E Street SW
Washington, DC 20423

Re: Initial Filings for FD 36853

Today I am submitting for filing the following materials in FD 36853:

1. **Verified Notice of Exemption**, including Exhibits, one of which is a redacted copy of the substantially final draft of the Membership Interest Purchase Agreement pertaining to the proposed transaction. These materials are intended to appear on the public docket.
2. **Motion for Protective Order** relating to the unredacted copy of the Membership Interest Purchase Agreement. The motion itself (but not the unredacted agreement) is intended to appear on the public docket.
3. **The confidential, unredacted** copy of the substantially final draft of the Membership Interest Purchase Agreement, to which the Motion for Protective Order applies. This unredacted copy of the agreement should not appear on the public docket.

The filing fee of \$1800 has been paid via Pay.Gov.

Please contact me if you have any questions regarding the above.

Sincerely,



David A. Schnitzer

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May 2, 2025

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May 2, 2025

SURFACE
TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36853

**STAR AMERICA FUND II GP, LLC (ON BEHALF OF STAR AMERICA
INFRASTRUCTURE FUND II, LP AND STAR AMERICA INFRASTRUCTURE
FUND II (PARALLEL), LP) AND STAR AMERICA RAIL HOLDCO, LLC—
CONTROL EXEMPTION—BELPRE INDUSTRIAL PARKERSBURG
RAILROAD, LLC (“BIP”); BUCYRUS INDUSTRIAL RAILROAD, LLC
(“BIR”); CORNHUSKER RAILROAD, LLC (“CNRR”)**

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

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Counsel for Star America Fund II GP, LLC
(Applicant on behalf of Star America
Infrastructure Fund II, LP and Star America
Infrastructure Fund II (Parallel), LP) and
Star America Rail Holdco, LLC

SUBMITTED MAY 2, 2025

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36853

**STAR AMERICA FUND II GP, LLC (ON BEHALF OF STAR AMERICA
INFRASTRUCTURE FUND II, LP AND STAR AMERICA INFRASTRUCTURE
FUND II (PARALLEL), LP) AND STAR AMERICA RAIL HOLDCO, LLC—
CONTROL EXEMPTION—BELPRE INDUSTRIAL PARKERSBURG
RAILROAD, LLC (“BIP”); BUCYRUS INDUSTRIAL RAILROAD, LLC
 (“BIR”); CORNHUSKER RAILROAD, LLC (“CNRR”)**

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

Pursuant to 49 C.F.R. § 1180.2(d)(2), Star America Fund II GP, LLC (on behalf of Star America Infrastructure Fund II, LP and Star America Infrastructure Fund II (Parallel), LP) and Star America Rail Holdco, LLC, all noncarriers (collectively, “Applicants”) submit this Verified Notice of Exemption (“Verified Notice”) to acquire control of three non-connecting Class III railroads: Belpre Industrial Parkersburg Railroad, LLC (“BIP”); Bucyrus Industrial Railroad, LLC (“BIR”); and Cornhusker Railroad, LLC (“CNRR”) (collectively, the “Carriers”).

The transaction meets each of the criteria for the 49 C.F.R. § 1180.2(d)(2) class exemption because

- (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition ...is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

49 C.F.R. § 1180.2(d)(2).

THE CARRIERS & PRIOR RELEVANT BOARD PROCEEDINGS

Bucyrus Industrial Railroad, LLC (“BIR”)

On July 9, 2019, BIR filed a verified notice of exemption to commence common carrier operations. *See Bucyrus Indus. R.R.—Operation Exemption—Bucyrus Railcar Repair, LLC*, No. FD 36329 (STB served July 25, 2019). BIR was (and is) fully owned by Cathcart Rail, LLC, which at the time of the 2019 transaction did not control any other carriers.

BIR is a Class III railroad operating as a common carrier over approximately five miles of trackage in the vicinity of Bucyrus, Ohio, including an interchange with Norfolk Southern. It does not connect to either BIP or CNRR. *See Exhibit 1, Map 2.*

Belpre Industrial Parkersburg Railroad, LLC (“BIP”)

On March 19, 2020, BIP filed a verified notice of exemption to lease trackage and operate as a common carrier. *See Belpre Indus. Parkersburg R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, No. FD 36388 (STB served April 3, 2020). On July 23, 2020, Cathcart Rail, LLC filed a Verified Notice of Exemption to continue in control of BIP upon BIP’s becoming a common carrier, reflecting that Cathcart Rail, LLC already controlled BIR. *See Cathcart Rail, LLC—Continuance In Control Exemption—Belpre Indus. Parkersburg R.R., LLC*, No. FD 36421 (STB served August 7, 2020).

BIP is a Class III railroad operating as a common carrier over approximately 49 miles of trackage in Ohio and West Virginia, including an interchange with CSX. It does not connect to either BIR or CNRR. *See Exhibit 1, Map 1.*

Cornhusker Railroad, LLC (“CNRR”)

On August 20, 2021, CNRR filed a verified notice of exemption to commence common carrier operations. *See Cornhusker R.R., LLC—Operation Exemption—Trackage in Hall and Adams Cntys., Neb.*, No. FD 36540 (STB served September 3, 2021). Concurrently, Cathcart Rail, LLC filed a verified notice of exemption to continue in control of CNRR upon CNRR’s becoming a common carrier, reflecting that Cathcart Rail, LLC already controlled BIP and BIR. *See Cathcart Rail, LLC—Continuance in Control Exemption—Cornhusker R.R., LLC*, No. FD 36541 (STB served November 26, 2021).¹

CNRR is a Class III railroad operating as a common carrier on two non-connected segments: (a) approximately 22 miles of track in the vicinity of Grand Island, Nebraska, including interchanges with both BNSF and UP; and (b) approximately five miles of tracks in the vicinity of Hastings, Nebraska, including an interchange with UP. It does not connect to either BIP or BIR. *See Exhibit 1, Maps 3A and 3B.*

INFORMATION REQUIRED BY 49 C.F.R. § 1180.4(g)

49 C.F.R. § 1180.6(a)(1)(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.

Brief Summary of Proposed Transaction

Background

Noncarrier Star America Fund II GP, LLC (on behalf of noncarrier Star America Infrastructure Fund II, LP (a Delaware LP) and noncarrier Star America Infrastructure Fund II (Parallel), LP (a Delaware LP)) controls noncarrier Star America Rail Holdco, LLC (a Delaware LLC).

¹ In FD 36540 and FD 36541, Cornhusker Railroad, LLC was referred to as “CORN” rather than “CNRR.”

Noncarrier Star America Rail Holdco, LLC, in turn, holds a non-controlling interest in noncarrier Cathcart Rail Holdco, LLC (a Delaware LLC), which in turn is the 100% direct owner of noncarrier Cathcart Rail, LLC (an Illinois LLC), which in turn is the 100% direct owner of noncarrier Cathcart Rail Services, LLC (a West Virginia LLC).

Noncarrier Cathcart Rail Services, LLC is the 100% direct owner of carriers BIP, BIR, and CNRR.

Except for BIP, BIR, and CNRR (which are all carriers), none of the above-listed entities is a carrier or controls a carrier.

Transaction

Star America Rail Holdco, LLC has agreed to acquire a controlling interest in Cathcart Rail Holdco, LLC (and thus indirectly in carrier BIP; carrier BIR; and carrier CNRR), via the purchase of additional shares in Cathcart Rail Holdco, LLC from Cathcart, Inc. (an Illinois corporation).²

As part of the same transaction, Star America Rail Holdco, LLC will also be acquiring a controlling interest in other noncarrier subsidiaries of Cathcart Rail Holdco, LLC, acquisitions which do not implicate the Board's authority.

Name of Applicants and Contact Information

Star America Fund II GP, LLC (on behalf of Star America Infrastructure Fund II, LP and
Star America Infrastructure Fund II (Parallel), LP)
Star America Rail Holdco, LLC
c/o Star America Infrastructure Partners, LLC
165 Roslyn Road
Roslyn Heights, NY 11577
Attention: General Counsel
generalcounsel@starinfrapartners.com

Name of Counsel and Contact Information

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² The presence of intermediate noncarrier holding companies (Cathcart Rail Holdco, LLC; Cathcart Rail, LLC; and Cathcart Rail Services, LLC) in the "chain of control" does not implicate the Board's authority or require authorization. *See Hainesport Transp. Grp., LLC-Corp. Fam. Transaction Exemption*, No. FD 36184, at 1 (STB served May 24, 2018).

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49 C.F.R. § 1180.6(a)(1)(ii): The proposed time schedule for consummation of the proposed transaction.

The parties intend to consummate the transaction once the notice of exemption becomes effective.

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

The purpose of the proposed transaction is for Applicants to assume control over Cathcart Rail Holdco, LLC and its subsidiaries, including the Carriers (BIP, BIR, and CNRR), as well as other noncarrier assets and subsidiaries. Applicants intend to continue to improve operating efficiencies and service, and further develop the business of each of the Carriers.

49 C.F.R. § 1180.6(a)(5): A list of the State(s) in which any part of the property of each applicant carrier is situated.

Applicants are, and will remain, noncarriers. The Carriers over which it will assume control maintain property as follows:

BIP:	Ohio and West Virginia
BIR:	Ohio
CNRR:	Nebraska

49 C.F.R. § 1180.6(a)(6): Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. 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 maps depicting the required information for each of the three Carriers. None of the Carriers connects to one another.

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

Exhibit 2 is a redacted version of a substantially final draft of the Membership Interest Purchase Agreement pertaining to the proposed transaction, to be filed on the public docket. Pursuant to 49 C.F.R. § 1104.14, Applicants are contemporaneously filing a motion for a protective order, together with an unredacted copy of the document.

49 C.F.R. § 1180.4(g)(1)(i): Level of Labor Protection

This proposed transaction involves only Class III carriers. Accordingly, no labor protection applies to this transaction. *See* 49 U.S.C. § 11326(c).

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

Applicants certify that the proposed transaction does *not* involve a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.

ADDITIONAL INFORMATION

49 C.F.R. §§ 1105.6 & 1105.8: Environmental Review & Historic Report

Pursuant to 49 C.F.R. § 1105.6(b)(4) and (c), the transaction is categorically excluded from environmental review because it will not result in operational changes exceeding any of the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5), and is not an action that otherwise “would normally require environmental documentation (such as a construction or abandonment).”

It is similarly exempt from the historic report requirements in 49 C.F.R. § 1105.8, as it involves “common control through stock ownership or similar action which will not substantially change the level of maintenance of railroad property,” 49 C.F.R. § 1105.8(b)(3), and does not involve an “action identified in § 1105.6(a) or (b), or an action in § 1105.6(c) that will result in the lease, transfer, or sale of a railroad’s line, sites or structures.” 49 C.F.R. § 1105.8(a).

Caption Summary

A caption summary in an appropriate form is attached as Exhibit 3.

Respectfully submitted,

\s\ Amy Bohannon

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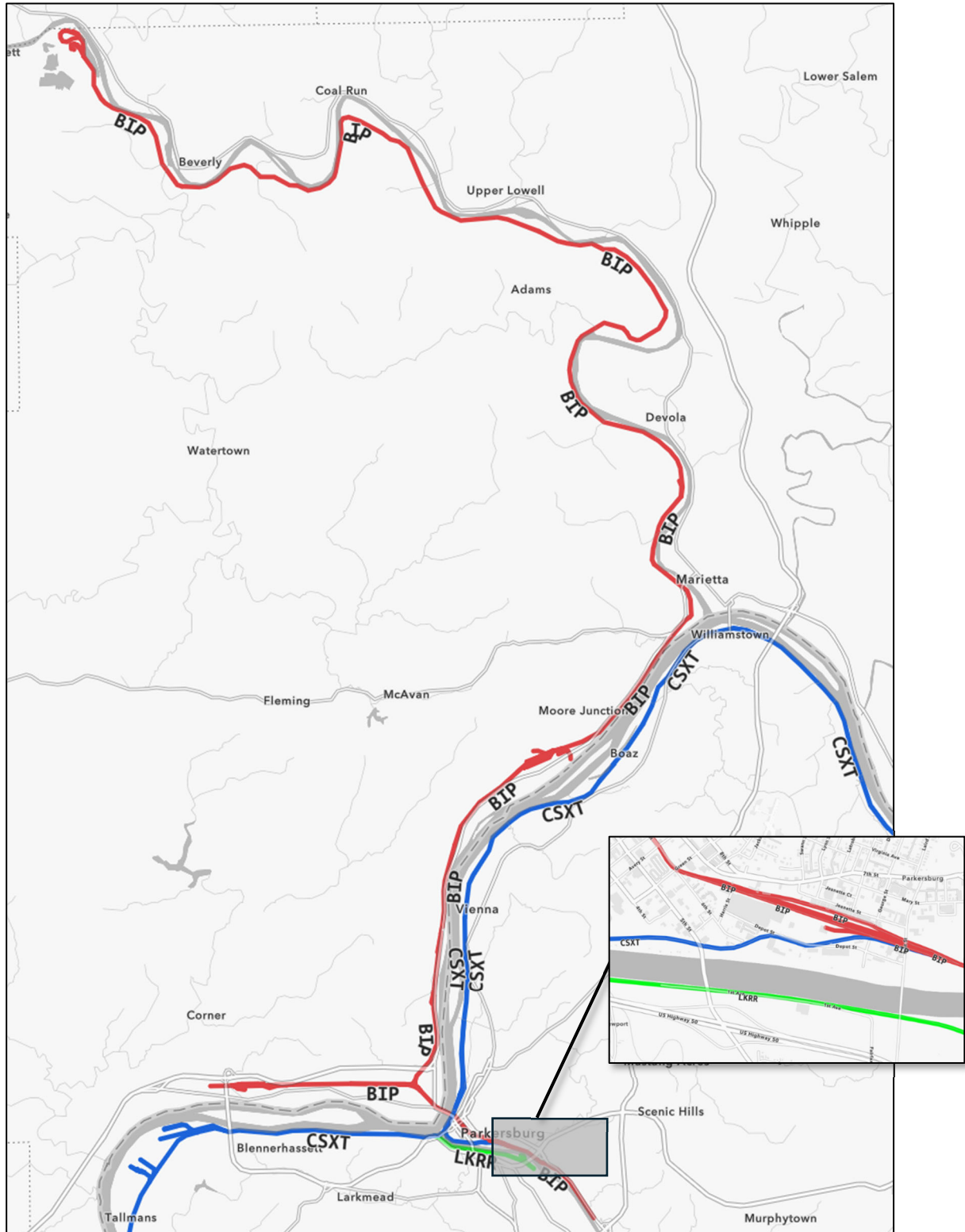
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Counsel for Star America Fund II GP, LLC
(Applicant on behalf of Star America
Infrastructure Fund II, LP and Star America
Infrastructure Fund II (Parallel), LP) and
Star America Rail Holdco, LLC

DATED: MAY 2, 2025

EXHIBIT 1:
MAPS

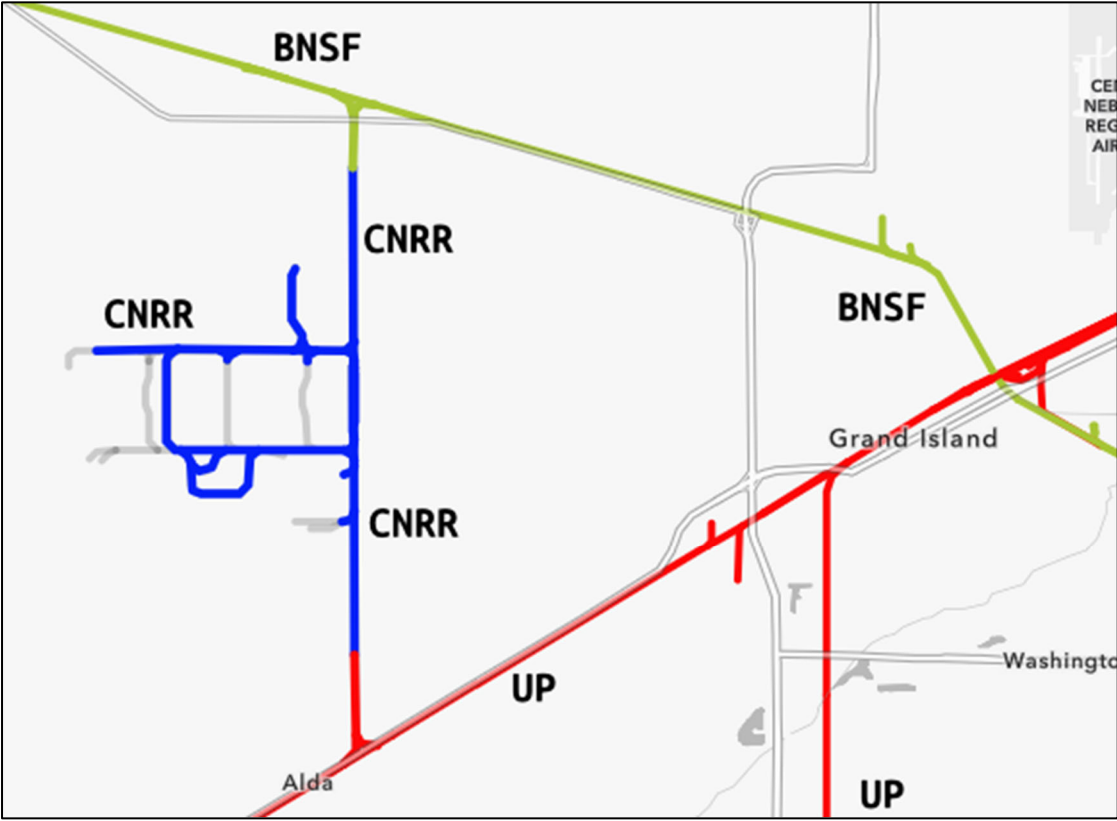
MAP 1
Belpre Industrial Parkersburg Railroad, LLC (“BIP”)



MAP 2
Bucyrus Industrial Railroad, LLC (“BIR”)



MAP 3A
Cornhusker Railroad, LLC (“CNRR”): Grand Island



MAP 3B
Cornhusker Railroad, LLC (“CNRR”): Hastings

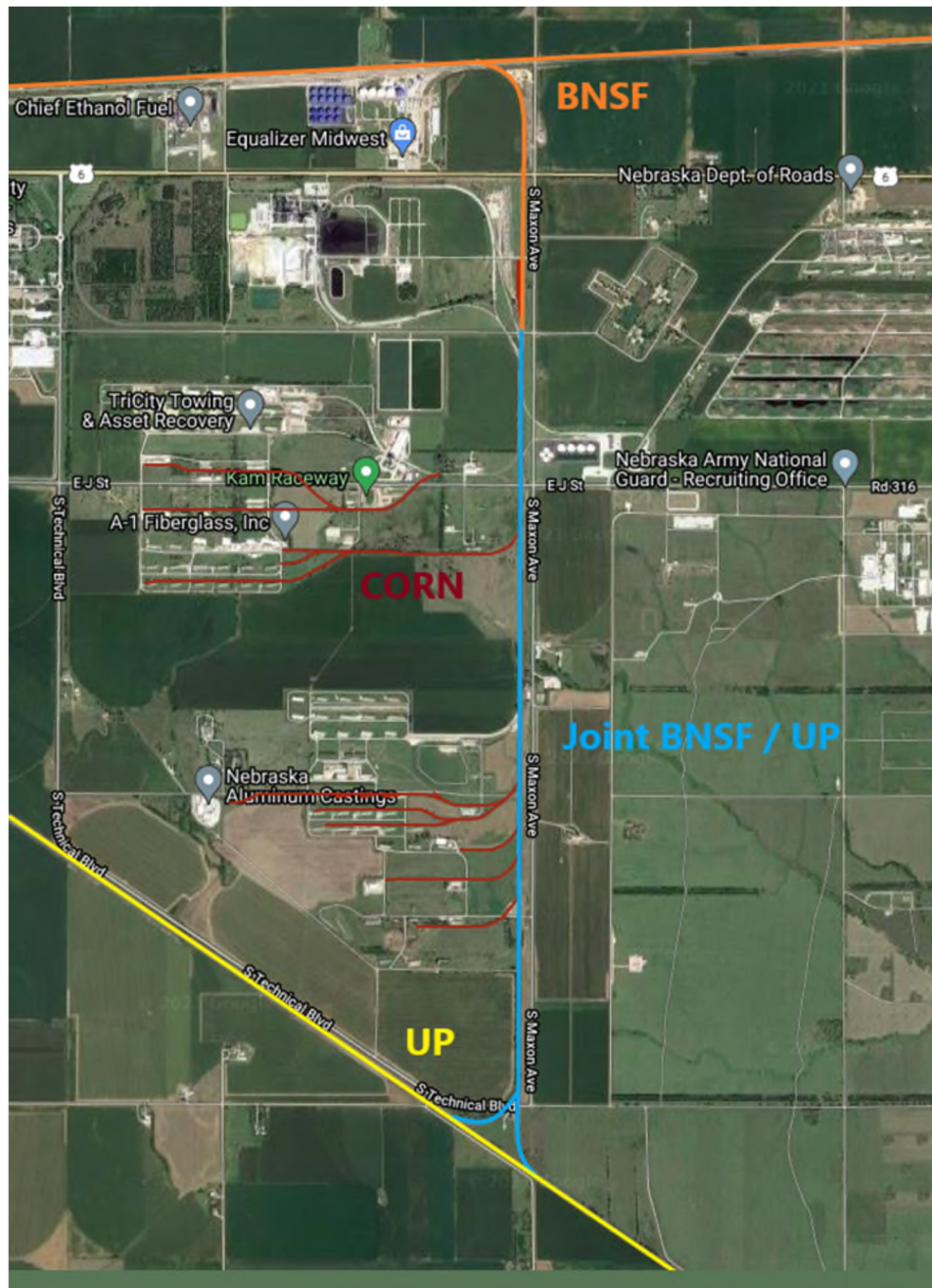


EXHIBIT 2:
AGREEMENT (REDACTED)

MEMBERSHIP INTEREST PURCHASE AGREEMENT

among

STAR AMERICA RAIL HOLDCO, LLC,

as the Buyer,

CATHCART RAIL HOLDCO, LLC,

as the Company,

and

CATHCART, INC.,

as the Seller

Dated as of [__, 2025]

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

MEMBERSHIP INTEREST PURCHASE AGREEMENT, dated as of [__, 2025] (this “Agreement”), among Star America Rail HoldCo, LLC, a Delaware limited liability company (the “Buyer”), Cathcart Rail Holdco, LLC, a Delaware limited liability company (the “Company”), and Cathcart, Inc., an Illinois corporation (the “Seller”).

RECITALS

A. The Seller owns 100% of the issued and outstanding Class A common units (the “Units”) and the FIP Award (as defined in Section Section 1.1 of this Agreement) of the Company.

B. The Seller wishes to sell to the Buyer, and the Buyer wish to purchase from the Seller, the Units.

C. The Company wishes to redeem and terminate the FIP Award for [REDACTED] and the Seller hereby acknowledges and agrees with such redemption and termination.

D. Concurrently with the execution and delivery of this Agreement, and as an inducement to the Buyer to enter into this Agreement, each of the Seller, Casey Cathcart, Thomas Cathcart, Susan Cathcart and Cindy Cathcart are entering into a separate restrictive covenant and release agreement, in each case in the form attached as Annex A hereto (each, a “Restrictive Covenant and Release Agreement” and, collectively, the “Restrictive Covenant and Release Agreements”).

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

“Action” means any claim, action, suit, inquiry, proceeding, audit or investigation by or before any Governmental Authority or any other arbitration, mediation or similar proceeding.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

“Ancillary Agreements” means the Restrictive Covenant and Release Agreements and all other agreements, documents and instruments required to be delivered by any party pursuant to this Agreement, and any other agreements, documents or instruments entered into at or prior to the Closing in connection with this Agreement or the transactions contemplated hereby.

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“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Company Intellectual Property” means all Intellectual Property owned or purported to be owned by the Company or its Subsidiaries.

“Company Operating Agreement” means the Third Amended and Restated Limited Liability Company Agreement of the Company, dated as of July 8, 2022.

“Contract” means any binding contract, license, sublicense, covenant, agreement, arrangement or understanding, whether written or oral and whether express or implied.

“control,” including the terms “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by Contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Encumbrance” means any charge, claim, equitable interest, mortgage, lien, option, pledge, security interest, easement, encroachment, right of first refusal, license, adverse claim, transfer restriction or other restriction of any kind.

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

“ERISA Affiliate” means any trade or business, whether or not incorporated, under common control with the Company or any of its Subsidiaries and that, together with the Company or any of its Subsidiaries, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“FIP Award” means the FIP Award granted to Seller pursuant to the Company Operating Agreement.

“Fraud” means [REDACTED]

“GAAP” means United States generally accepted accounting principles and practices as in effect on the date hereof.

“Governmental Authority” means any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury).

“Immediate Family” means, with respect to any specified Person, such Person’s spouse, parents, children, grandparents, grandchildren and siblings, including adoptive

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relationships and relationships through marriage, or any other relative of such Person that shares such Person's home.

"Indebtedness" means

[REDACTED]

"Intellectual Property" means all intellectual property rights arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: (i) trade names, trademarks, service marks, logos, brands, domain names and other Internet addresses or identifiers, trade dress and other indicia of source or origin, and all registrations and applications to register any of the foregoing (including intent to use applications and similar reservations of marks) and all goodwill associated therewith (collectively, "Marks"); (ii) patents and patent applications and invention disclosures, including all amendments, counterparts, continuations, continuations-in-part, divisionals, extensions, provisionals, reexaminations, reissues, renewals, reviews and substitutions thereof (collectively, "Patents"); (iii) published and unpublished works of authorship, copyrights therein and thereto, Software, and all registrations and applications for registration thereof (collectively, "Copyrights"); (iv) trade secrets, know-how, proprietary information, and inventions, including methods, processes and processing instructions, technical data or designs, specifications, research and development information, technology, product roadmaps, and customer lists whether or not in tangible or intangible form or media (collectively, "Trade Secrets"); and (v) moral rights, publicity rights, data base rights and any other proprietary or intellectual property rights of any kind or nature.

"knowledge," with respect to a party, means the actual knowledge of such party, in the case of an individual, or any officer or director of such party, in the case of an entity, and, in each case, upon reasonable inquiry. "To Seller's knowledge" or "to the knowledge of Seller" means the actual knowledge, upon reasonable inquiry, of Casey Cathcart and Thomas Cathcart.

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“Law” means any statute, law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or order of any Governmental Authority.

“Leased Real Property” means all real property leased, subleased or licensed to the Company or any of its Subsidiaries or which the Company or any of its Subsidiaries otherwise has a right or option to use or occupy, together with all structures, facilities, fixtures, systems, improvements and items of property previously or hereafter located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

“Losses” means any and all losses, damages, liabilities, deficiencies, claims, diminution of value, interest, awards, judgments, penalties, costs and expenses (including attorneys’ fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing).

“Material Adverse Effect” means any event, change, circumstance, occurrence, effect, result or state of facts that, individually or in the aggregate, (i) is or would reasonably be expected to be materially adverse to the business, assets, liabilities, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole or (ii) materially impairs the ability of the Seller to consummate, or prevents or materially delays, any of the transactions contemplated by this Agreement or the Ancillary Agreements or would reasonably be expected to do so; provided, however, that in the case of clause (i) only, Material Adverse Effect shall not include any event, change, circumstance, occurrence, effect or state of facts to the extent resulting from (1) changes generally affecting the freight rail industry, or the economy or the financial or securities markets, in the United States, (2) the outbreak of war or acts of terrorism, or (3) changes in Law or GAAP first announced or proposed after the date of this Agreement; provided further, that, with respect to clauses (1), (2) and (3), the impact of such event, change, circumstances, occurrence, effect or state of facts is not disproportionately adverse to the Company and its Subsidiaries, taken as a whole, as compared to other similarly situated companies.

“Owned Real Property” means all real property owned by the Company or any of its Subsidiaries, together with all structures, facilities, fixtures, systems, improvements and items of property previously or hereafter located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

“Pandemic Response Laws” means the CARES Act, the FFCRA, the Payroll Tax Executive Order, the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (116th Cong. (Dec. 27, 2020)), the American Rescue Plan Act Pub. L. No. 117-2 (117th Cong. (Mar. 11, 2021)), and any other similar or additional federal, state, local, or foreign law, or administrative guidance intended to benefit taxpayers in response to the COVID-19 pandemic and associated economic downturn.

“Partnership Tax Audit Rules” means Sections 6221 through 6241 of the Code, as amended, together with any final or temporary Treasury Regulations, Revenue Rulings and case law interpreting Sections 6221 through 6241 of the Code (and similar provisions of state, local and non-U.S. Law).

REDACTED COPY FOR PUBLIC FILING

“Permitted Encumbrances” means (i) liens for Taxes not yet past due and for which adequate reserves have been established in accordance with GAAP, (ii) mechanics’, workmen’s, repairmen’s, warehousemen’s and carriers’ liens arising in the ordinary course of business of the Company or such Subsidiary consistent with past practice, (iii) non-exclusive licenses to Intellectual Property entered in the ordinary course of business, (iv) any such matters of record, Encumbrances and other imperfections of title that do not, individually or in the aggregate, materially impair the continued ownership, use and operation of the assets to which they relate (other than Intellectual Property) in the business of the Company and its Subsidiaries as currently conducted and (v) any applicable transfer restriction under the Company Operating Agreement.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Related Party,” with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; (ii) any Person who serves or within [REDACTED] has served as a director, executive officer, partner, member or in a similar capacity of such specified Person; (iii) any Immediate Family member of a Person described in clause (ii); or (iv) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such Person’s Immediate Family, more than [REDACTED] of the outstanding equity or ownership interests of such specified Person.

“Representatives” means, with respect to any Person, the officers, directors, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

“Return” means any return, declaration, report, statement, information statement and other document filed or required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“R&W Insurance Policy” means the buy-side representations and warranties policy obtained by the Buyer in connection with the transactions contemplated hereby, the form of which is attached as Annex B hereto.

“Software” means any and all computer programs, software (in object and source code), firmware, middleware, applications, API’s, web widgets, code and related algorithms, models and methodologies, files, documentation and all other tangible embodiments thereof.

“Subsidiary” means, with respect to any Person, any other Person controlled by such first Person, directly or indirectly, through one or more intermediaries.

“Systems” means servers, hardware, databases, circuits, networks and other computer, information technology, and telecommunications assets and equipment, including any outsourced systems and processes and Websites.

“Taxes” means: (i) all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license,

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lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever (including any amounts resulting from the failure to file any Return), together with any interest and any penalties, additions to tax or additional amounts with respect thereto; (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

“Transfer Taxes” means sales, use, transfer (including real property transfer Tax), recording, documentary, stamp, value added, registration, stock transfer, transaction, and similar Taxes applicable to or arising as a result of the consummation of any of the transactions contemplated by this Agreement.

“Websites” means all Internet websites, including content, text, graphics, images, audio, video, data, databases, Software and related items included on or used in the operation of and maintenance thereof, and all documentation, ASP, HTML, DHTML, SHTML, and XML files, cgi and other scripts, subscriber data, archives, and server and traffic logs and all other tangible embodiments related to any of the foregoing.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

<u>Definition</u>	<u>Location</u>
Agreement.....	Preamble
Business	5.6(b)
Buyer.....	Preamble
CERCLA.....	3.17(c)(iii)
Closing	2.2(a)
Closing Date.....	2.2(a)
Company	Preamble
Company Registered IP	3.15I
Disclosure Schedules	Article III
DPA.....	3.23
Environmental Laws	3.17I(i)
Environmental Permits.....	3.17I(ii)
Financial Statements	3.7(a)
Hazardous Substances.....	3.17I(iii)
Interim Financial Statements	3.7(a)
IRS	3.11(b)
Material Contracts.....	3.18(a)
Permits	3.9(b)
Plans.....	3.11(A)
Privacy Laws.....	3.21(a)

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<u>Definition</u>	<u>Location</u>
Purchase Price	2.1
Release	3.17I(iv)
Remediation	3.17I(v)
Restrictive Covenant Agreement	Recitals
Seller	Preamble
Seller Marks	5.6(a)
Units	Recitals

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Units; Redemption of FIP Award. Upon the terms and subject to the conditions of this Agreement, at the Closing:

(a) the Seller shall sell, assign, transfer, convey and deliver the Units to the Buyer, free and clear of all Encumbrances, other than Encumbrances arising under the Company Operating Agreement or applicable federal and state securities laws, and the Buyer, in consideration of the representations, warranties and covenants contained herein, shall purchase the Units from the Seller for an aggregate purchase price of [REDACTED] (the “Purchase Price”) and certain other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged; and

(b) the Company shall automatically and without any further action by any other party be deemed to have redeemed for [REDACTED], and the Seller shall be deemed to have transferred, conveyed, and delivered to the Company, the FIP Award, and immediately following such transfer and redemption, the FIP Award will be cancelled and will cease to represent an interest in the Company and neither the Company, the Buyer or any of their respective Affiliates will have any further obligation or liability in respect of the FIP Award, and by the Seller’s execution of this Agreement, the Seller will be deemed to have acknowledged and agreed that, effective as of the Closing, the Seller has no further interest in the FIP Award and that [REDACTED] will be delivered to the Seller in respect of the FIP Award redemption or otherwise in respect of the FIP Award.

Section 2.2 Closing.

(a) The sale and purchase of the Units and the redemption and cancellation of the FIP Award (the “Closing”) shall take place by exchanging electronic signature pages on [REDACTED] (the “Closing Date”), or at such place, on such other date and at such other time as may be mutually agreed upon in writing by the parties. The Closing shall be deemed to occur at 10:00 a.m., Eastern time on the Closing Date or at such other time as may be mutually agreed upon in writing by the parties.

(b) At the Closing:

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(i) the Buyer shall deliver or cause to be delivered to the Seller an amount equal to the Purchase Price, by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Annex C hereto;

(ii) the Seller shall deliver to the Buyer a valid and properly completed and executed IRS Form W-9 certifying that the Seller is exempt from federal backup withholding tax;

(iii) the Buyer shall have received an executed counterpart of the Restrictive Covenant and Release Agreements, signed by each party other than the Buyer;

(iv) the Buyer shall deliver to the Seller evidence that the R&W Insurance Policy is bound;

(v) the Buyer shall have received letters of resignation from the directors of the Company and each of its Subsidiaries, which directors are listed on Schedule 2.2(b)(v) hereto;

(vi) the Seller shall deliver or cause to be delivered to the Company possession of the vehicles listed on Schedule 2.2(b)(vi) hereto;

(vii) the Company shall deliver or cause to be delivered to the Seller documentation evidencing the transfer of title to the vehicle listed on Schedule 2.2(b)(vii) from the Company to Casey Cathcart;

(viii) the Seller shall deliver or cause to be delivered to the Buyer a unit transfer power evidencing the transfer of the Units to the Buyer; and

(ix) the acquisition by Buyer of control of Belpre Industrial Parkersburg Railroad, LLC; Bucyrus Industrial Railroad, LLC; and Cornhusker Railroad, LLC, has been approved and authorized by the Surface Transportation Board (the “STB”) by virtue of (a) the passage of the applicable effective date following the filing with the STB of a notice of exemption under 49 C.F.R. § 1180.2, or (b) an order of the STB otherwise providing said approval and authorization.

(c) All payments hereunder shall be made by wire transfer of immediately available funds in United States dollars to such account as may be designated to the payor by the payee at least two Business Days prior to the applicable payment date.

Section 2.3 Withholding. Notwithstanding anything to the contrary in this Agreement, the Buyer shall be entitled to deduct and withhold from any amount otherwise payable to the Seller pursuant to this Agreement such amounts of Tax as the Buyer determines that it is required by Law to deduct or withhold with respect to the making of such payment. The Buyer shall notify the Seller of any such amount or amounts of Tax determined by the Buyer as being required by Law to be deducted or withheld from the purchase price payable to Seller hereunder; provided, that no notice shall be required with respect to any amounts deducted or withheld as a result of Seller’s failure to provide a valid and properly completed and executed IRS Form W-9 pursuant to Section

2.2(b)(ii). Any amounts so deducted or withheld will be treated for all purposes of this Agreement as having been paid to the Seller.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the corresponding sections or subsections of the Disclosure Schedules attached hereto (collectively, the “Disclosure Schedules”), the Seller, and the Company, as applicable, hereby represent and warrant to the Buyer that, as of the date hereof:

Section 3.1 Organization and Qualification.

(a) The Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Illinois and has full corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

(b) Each of the Company and its Subsidiaries is (i) a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization as set forth on Schedule 3.1(b) of the Disclosure Schedules, and has full limited liability company power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted and as currently proposed to be conducted and (ii) duly qualified or licensed as a foreign limited liability company to do business, and is in good standing, in each jurisdiction where the character of the properties and assets occupied, owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for any such failures to be so qualified or licensed and in good standing that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(c) Neither the Company nor any of its Subsidiaries is in violation of any of the provisions of its certificate of incorporation, bylaws or equivalent organizational documents.

Section 3.2 Authority. Each of the Seller and the Company has full corporate or limited liability company power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by each of the Seller and the Company of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by each of the Seller and the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action. This Agreement has been, and upon their execution each of the Ancillary Agreements to which the Seller or the Company will be a party will have been, duly executed and delivered by the Seller or the Company, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon their execution each of the Ancillary Agreements to which the Seller or the Company will be a party will constitute, the legal, valid and binding obligations of the Seller or the Company, enforceable against the Seller or the Company in accordance with their respective terms.

Section 3.3 No Conflict; Required Filings and Consents. Except as set forth on Schedule 3.3 of the Disclosure Schedules:

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(a) The execution, delivery and performance by each of the Seller and the Company of this Agreement and each of the Ancillary Agreements to which the Seller or the Company will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws or equivalent organizational documents of the Seller or the Company or any of its Subsidiaries;

(ii) conflict with or violate any Law applicable to the Seller, or conflict with or violate any Law applicable to the Company or any of its Subsidiaries, or by which any property or asset of the Seller or the Company or any of its Subsidiaries is bound; or

(iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of or notice to any Person pursuant to, give to others any right of termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties, require the offering or making of any payment or redemption, give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person or otherwise materially and adversely affect any rights of the Seller or the Company or any of its Subsidiaries under, or result in the creation of any Encumbrance on any property, asset or right of the Seller or the Company or any of its Subsidiaries pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other Contract to which the Seller or the Company or any of its Subsidiaries is a party or by which the Seller or the Company or any of its Subsidiaries or any of their respective properties, assets or rights are bound, except, in the case of this clause (iii), for any such conflicts, violations, breaches, defaults or other occurrences that would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(b) Except as set forth on Schedule 3.3(b) of the Disclosure Schedules, neither the Seller, nor the Company or any of its Subsidiaries, is required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Seller or the Company of this Agreement and each of the Ancillary Agreements to which the Seller or the Company will be a party or the consummation of the transactions contemplated hereby or thereby, or in order to prevent the termination of any right, privilege, license or qualification of the Company or any of its Subsidiaries, except for (i) such filings as may be required by any applicable federal or state securities or “blue sky” laws or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

Section 3.4 Units. The Seller is the record and beneficial owner of the Units, free and clear of any Encumbrance. The Seller has the right, authority and power to sell, assign and transfer the Units to the Buyer. Upon delivery to the Buyer of certificates for the Units and/or such unit transfer power, as applicable, at the Closing and the Buyer’s payment of the Purchase Price, the Buyer shall acquire good, valid and marketable title to the Units, free and clear of any Encumbrance.

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Section 3.5 Capitalization. Schedule 3.5 of the Disclosure Schedules sets forth, for the Company and for each of its Subsidiaries, the amount of its authorized equity or ownership interests, the amount of its outstanding equity or ownership interests, and the record and beneficial owners of its outstanding equity or ownership interests. Except for the Units and except as set forth on Schedule 3.5 of the Disclosure Schedules, neither the Company nor any of its Subsidiaries has issued or agreed to issue any: (a) share of capital stock or other equity or ownership interest; (b) option, warrant or interest convertible into or exchangeable or exercisable for the purchase of shares of capital stock or other equity or ownership interests; (c) stock appreciation right, phantom stock, interest in the ownership or earnings of the Company or any of its Subsidiaries or other equity equivalent or equity-based award or right; or (d) bond, debenture or other Indebtedness having the right to vote or convertible or exchangeable for securities having the right to vote. Each outstanding share of capital stock or other equity or ownership interest of the Company and each of its Subsidiaries is duly authorized, validly issued, fully paid and nonassessable, and in the case of its Subsidiaries, except as set forth on Schedule 3.5 of the Disclosure Schedules, each such share or other equity or ownership interest is owned by the Company or another Subsidiary, free and clear of any Encumbrance, other than any Permitted Encumbrances. All of the aforesaid shares or other equity or ownership interests have been offered, sold and delivered by the Company or a Subsidiary in compliance with all applicable federal and state securities laws. Except as set forth on Schedule 3.5 of the Disclosure Schedules and except for rights granted to the Buyer under this Agreement, there are no outstanding obligations of the Company or any of its Subsidiaries to issue, sell or transfer or repurchase, redeem or otherwise acquire, or that relate to the holding, voting or disposition of or that restrict the transfer of, the issued or unissued capital stock or other equity or ownership interests of the Company or any of its Subsidiaries. No shares of capital stock or other equity or ownership interests of the Company or any of its Subsidiaries have been issued in violation of any rights, agreements, arrangements or commitments under any provision of applicable Law, the certificate of incorporation or bylaws or equivalent organizational documents of the Company or any of its Subsidiaries or any Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound.

Section 3.6 Equity Interests. Except for the Subsidiaries listed on Schedule 3.5 of the Disclosure Schedules, neither the Company nor any of its Subsidiaries directly or indirectly owns any equity, partnership, membership or similar interest in, or any interest convertible into, exercisable for the purchase of or exchangeable for any such equity, partnership, membership or similar interest, or is under any current or prospective obligation to form or participate in, provide funds to, make any loan, capital contribution or other investment in or assume any liability or obligation of, any Person.

Section 3.7 Financial Statements; No Undisclosed Liabilities; Projections.

(a) True and complete copies of the audited consolidated balance sheet of the Company and its Subsidiaries as at [REDACTED], and the related audited consolidated statements of income, retained earnings, stockholders' equity and changes in financial position of the Company and its Subsidiaries, together with all related notes and schedules thereto, accompanied by the reports thereon of the Company's independent auditors (collectively referred to as the "Financial Statements") and the unaudited consolidated balance sheet, profit and loss statement, and cash flow statement of the Company and its Subsidiaries as at [REDACTED], together with all related notes and schedules thereto

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(collectively referred to as the “Interim Financial Statements”), are attached hereto as Schedule 3.7(a) of the Disclosure Schedules. Except as set forth on Schedule 3.7(a) of the Disclosure Schedules, each of the Financial Statements and the Interim Financial Statements (i) are correct and complete in all material respects and have been prepared in accordance with the books and records of the Company and its Subsidiaries, (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and (iii) fairly present, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein and subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments that will be consistent with past practice and will not, individually or in the aggregate, be material.

(b) Except as and to the extent adequately accrued or reserved against in the Interim Financial Statements as at [REDACTED], neither the Company nor any of its Subsidiaries has any liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, whether known or unknown and whether or not required by GAAP to be reflected in a consolidated balance sheet of the Company and its Subsidiaries or disclosed in the notes thereto, except for liabilities and obligations, incurred in the ordinary course of business consistent with past practice since [REDACTED], that are not, individually or in the aggregate, material to the Company or any of its Subsidiaries.

(c) The books of account and financial records of the Company and its Subsidiaries are true and correct in all material respects and have been prepared and are maintained in accordance with sound accounting practice.

Section 3.8 Absence of Certain Changes or Events.

(a) Since [REDACTED]: (a) the Company and its Subsidiaries have conducted their businesses in the ordinary course consistent with past practice; (b) there has not been any change, event or development or prospective change, event or development that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect; and (c) neither the Company nor any of its Subsidiaries has suffered any material loss, damage, destruction or other casualty affecting, any of its material properties or assets, whether or not covered by insurance.

(b) Since [REDACTED], except as set forth in Schedule 3.8(b) of the Disclosure Schedules, the Company and its Subsidiaries have not:

(i) amended or otherwise changed its certificate of incorporation or bylaws or equivalent organizational documents;

(ii) issued, sold, pledged, transferred, disposed of or otherwise subjected to any Encumbrance (i) any equity securities of the Company or any of its Subsidiaries, or any options, warrants, convertible securities or other rights of any kind to acquire any such equity securities or (ii) any properties or assets of the Company or any of its Subsidiaries, other than sales or transfers of inventory in the ordinary course of business consistent with past practice;

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(iii) declared, set aside, made or paid any non-cash dividend or other distribution on or with respect to any of its capital stock or other equity or ownership interest;

(iv) reclassified, combined, split, subdivided or redeemed, or purchased or otherwise acquired, directly or indirectly, any of its capital stock or other equity or ownership interest, or make any other change with respect to its capital structure;

(v) acquired any corporation, partnership, limited liability company, other business organization or division thereof or any material amount of assets, or entered into any joint venture, strategic alliance, exclusive dealing, noncompetition or similar contract or arrangement;

(vi) adopted a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries, or otherwise altered the Company's or a Subsidiary's corporate structure in any material respect;

(vii) incurred any Indebtedness, except in the ordinary course of business consistent with past practice;

(viii) amended, waived, modified or consented to the termination of any Material Contract, or amended, waived, modified or consented to the termination of the Company's or any of its Subsidiaries' rights thereunder, or entered into any Contract other than in the ordinary course of business consistent with past practice;

(ix) authorized, or made any commitment with respect to, any single capital expenditure that is in excess of [REDACTED] or capital expenditures that are, in the aggregate, in excess of [REDACTED] for the Company and its Subsidiaries taken as a whole;

(x) entered into any lease of real or personal property or any renewals thereof involving a term of more than one year or rental obligation exceeding [REDACTED] per year in any single case;

(xi) increased the compensation payable or to become payable or the benefits provided to its directors, officers or employees, except for normal merit and cost-of-living increases consistent with past practice in salaries or wages of employees of the Company or any of its Subsidiaries who are not directors or officers of the Company or any of its Subsidiaries and who receive less than [REDACTED] in total annual compensation from the Company or any of its Subsidiaries, or granted any severance or termination payment to, or pay, loan or advance any amount to, any director, officer or employee of the Company or any of its Subsidiaries, or established, adopted, entered into or amended any Plan;

(xii) entered into any Contract with any Related Party of the Company or any of its Subsidiaries;

(xiii) made any material change in any method of accounting or accounting practice or policy, except as required by GAAP;

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(xiv) make, revoke or modify any Tax election, settle or compromise any material Tax liability or file any Return other than on a basis consistent with past practice;

(xv) paid, discharged or satisfied any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against on the Interim Financial Statements or subsequently incurred in the ordinary course of business consistent with past practice;

(xvi) cancelled, compromised, waived or released any right or claim other than in the ordinary course of business consistent with past practice;

(xvii) permitted the lapse of any existing policy of insurance relating to the business or assets of the Company and its Subsidiaries;

(xviii) sold, assigned, transferred, exclusively licensed, abandoned, waived, permitted to lapse or otherwise disposed of any Company Intellectual Property (other than the expiration of Company Registered IP at the end of its statutory term);

(xix) accelerated the collection of or discount any accounts receivable, delayed the payment of accounts payable or defer expenses, reduced inventories or otherwise increased cash on hand, except in the ordinary course of business consistent with past practice;

(xx) paid or become liable to pay any costs or expenses arising out of or related to the transactions contemplated by this Agreement or the Ancillary Agreements;

(xxi) commenced or settled any Action;

(xxii) taken any action, or intentionally failed to take any action, that would cause any representation or warranty made by the Company in this Agreement or any Ancillary Agreement to be untrue or result in a breach of any covenant made by the Company in this Agreement or any Ancillary Agreement, or that has or would reasonably be expected to have a Material Adverse Effect; or

(xxiii) announced an intention, entered into any formal or informal agreement, or otherwise made a commitment to do any of the foregoing.

(c) Seller has not taken any action, or intentionally failed to take any action, that would cause any representation or warranty made by the Seller in this Agreement or any Ancillary Agreement to be untrue or result in a breach of any covenant made by the Seller in this Agreement or any Ancillary Agreement, or that has or would reasonably be expected to have a Material Adverse Effect.

Section 3.9 Compliance with Law; Permits.

(a) Each of the Company and its Subsidiaries is and during [REDACTED] [REDACTED] has been in compliance in all material respects with all Laws applicable to it. None of the Company, any of its Subsidiaries or any of its or their executive officers has received during [REDACTED]

██████████, any written notice, order, complaint or other written communication from any Governmental Authority or any other Person that the Company or any of its Subsidiaries is not in compliance in any material respect with any Law applicable to it.

(b) Schedule 3.9 of the Disclosure Schedules sets forth a true and complete list of all permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority necessary for each of the Company and its Subsidiaries to own, lease and operate its properties and to carry on its business in all material respects as currently conducted (the “Permits”). Each of the Company and its Subsidiaries is and during ██████████ has been, in compliance in all material respects with all such Permits. No suspension, cancellation, modification, revocation or nonrenewal of any Permit is pending or threatened in writing. The Company and its Subsidiaries will continue to have the use and benefit of all Permits immediately following consummation of the transactions contemplated hereby. To Seller’s knowledge, no Permit is held in the name of any employee, officer, director, stockholder, agent or other Person on behalf of the Company or any of its Subsidiaries. No Permit is held in the name of the Seller or any Related Party of the Seller on behalf of the Company or any of its Subsidiaries.

Section 3.10 Litigation. Except as set forth on Schedule 3.10 of the Disclosure Schedules, there is no Action pending or threatened in writing against the Company or any of its Subsidiaries, or any material property or asset of the Company or any of its Subsidiaries, or any of the officers of the Company or any of its Subsidiaries in regards to their actions as such. There is no Action pending or, to the knowledge of the Seller, threatened seeking to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement or the Ancillary Agreements. There is no outstanding order, writ, judgment, injunction, decree, determination or award of, or pending or threatened formal investigation by, any Governmental Authority relating to the Company or any of its Subsidiaries. There is no Action by the Company or any of its Subsidiaries pending, or which the Company or any of its Subsidiaries has commenced preparations to initiate, against any other Person. There is no Action, dispute or other procedure pending with the Association of American Railroads against the Company or any of its Subsidiaries. To Seller’s knowledge, there is no Action, dispute or other procedure threatened by the Association of American Railroads against the Seller, or against the Company or any of its Subsidiaries.

Section 3.11 Employee Benefit Plans.

(a) Schedule 3.11(a) of the Disclosure Schedules sets forth a true, correct and complete list of all material Plans. For purposes of this Agreement, “Plans” means, (i) all employee benefit plans (as defined in ERISA, whether or not subject to ERISA) and all compensation, employment, independent contractor, bonus, commission, stock purchase, equity or equity-linked, incentive, deferred compensation, pension, retirement, supplemental retirement, severance, termination, change in control, retention, transaction bonus, health, welfare, retiree medical or life insurance, tax gross-up, indemnification, or other benefit plans, programs, Contracts, agreements, policies or arrangements, in each case whether written or unwritten, with respect to which the Company or any of its Subsidiaries has or would reasonably be expected to have any obligation (whether current or contingent) or which are maintained, contributed to or sponsored by, or required to be maintained, contributed to, or sponsored by, the Company or any

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of its Subsidiaries as of the date hereof; and (ii) each employee benefit plan for which the Company or any of its Subsidiaries has or would reasonably be expected to incur liability under Section 4069 of ERISA in the event such plan has been or were to be terminated or under Section 4212(c) of ERISA.

(b) The Company has furnished to the Buyer true, correct and complete copies of each material Plan and each (i) trust or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the three most recently filed Internal Revenue Service (“IRS”) Form 5500 and all exhibits thereto, (iv) the most recently received IRS determination letter for each such Plan and the application materials submitted in connection with such determination letter, (v) the most recently prepared actuarial report and financial statement in connection with each such Plan, (vi) non-discrimination testing results for the three most recently completed Plan years, (vii) each trust agreement and insurance or group annuity Contract relating to any Plan, including any amendments thereto; and (viii) all material communications with any Plan administrator or any Governmental Authority. Neither the Company nor any of its Subsidiaries has committed in writing to enter into any Contract to provide compensation or benefits to any individual or to modify, change or terminate any Plan, other than with respect to a modification, change or termination required by ERISA or the Code or to enter into any plan, agreement or arrangement that would be a Plan if in effect as of the date hereof.

(c) None of the Plans is or has ever been, and neither the Company nor any of its ERISA Affiliates has or has ever had any liability (whether current or contingent) nor have ever contributed to, sponsored or maintained or been required to contribute to, sponsor or maintain, (i) “pension plan” within the meaning of Section 3(2) of ERISA, or that is subject to Section 412 or 4971 of the Code or Title IV or Section 302 of ERISA, (ii) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), (iii) a “multiple employer plan,” within the meaning of Section 4063 or Section 4064 of ERISA or Section 413(c) of the Code, (iv) a “multiple employer welfare benefit arrangement” as described in Section 3(40)(A) of ERISA, or (v) a “voluntary employees’ beneficiary association” (as defined in Section 501(c)(9) of the Code). Neither the Company nor any of its ERISA Affiliates has any liability under Title IV of ERISA. No Plan provides for or promises, and no Company has incurred any current or projected liability in respect of, any health, welfare or life insurance benefits for any Person upon or following retirement or termination of employment, service, or ownership, except as otherwise required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or other applicable Law (for which the applicable participant bears the sole cost of all associated premiums).

(d) Neither the execution and delivery of this Agreement nor the approval or consummation of the transactions contemplated hereby will, either alone or together with any other event, (i) increase any payments or benefits payable to any current or former employee or other individual service provider, (ii) entitle any current or former employee or other individual service provider to any payment or benefit, (iii) result in the acceleration of the time of payment, funding or vesting of any payments or benefits to or for the benefits of any current or former employee or other individual service provider, (iv) require the funding of or otherwise secure or guarantee any payment or benefit to or for the benefit of any employee or other individual service provider, or (v) result in the forgiveness of any loan or guarantee to any employee or other individual service provider.

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(e) Each of the Plans is maintained in the United States and is subject only to the Laws of the United States or a political subdivision thereof.

(f) Each Plan is now and always has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code and each “group health plan” maintained by the Company or any of its ERISA Affiliates has been administered and operated in all material respects in compliance with the applicable requirements of Section 601 of ERISA, Section 4980B(b) of the Code and the applicable provisions of the Health Insurance Portability and Accountability Act of 1986. The Company is not subject to any liability, including additional contributions, fines, penalties or loss of tax deduction as a result of such administration and operation. Each of the Company and its Subsidiaries has performed all obligations required to be performed by it and is not in any respect in default under or in violation under any Plan, nor is there currently any existing or threatened default or violation by any other party to any Plan. There are no Actions or claims (other than routine claims for benefits) pending or threatened, anticipated or expected to be asserted with respect to any Plan or any related trust or other funding medium thereunder or with respect to the Company or any ERISA Affiliate as the sponsor or fiduciary thereof or with respect to any other fiduciary thereof and no Plan or any related trust or other funding medium thereunder or any fiduciary thereof is the subject of an audit, investigation or examination by any Governmental Authority. There has not been any prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, with respect to any Plan. All contributions, premiums or payments required to be made with respect to any Plan have been made on or before their due dates. All such contributions have been fully deducted for income tax purposes. No such deduction has been challenged or disallowed by any Governmental Authority and no fact or event exists that would give rise to any such challenge or disallowance.

(g) Each Plan that is intended to be qualified under Section 401(a) of the Code or Section 401(k) of the Code has received a timely favorable determination letter from the IRS, covering all of the provisions applicable to the Plan for which determination letters are currently available, that the Plan is so qualified. Each trust established in connection with any Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination letter from the IRS that it is so exempt. No fact or event has occurred since the date of such determination letter or letters from the IRS or is threatened or reasonably anticipated that could adversely affect the qualified status of any such Plan or the exempt status of any such trust.

(h) With respect to each Plan that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A(d)(1) of the Code), such plan or arrangement has been operated since [REDACTED] in compliance with Section 409A of the Code and all applicable IRS guidance promulgated thereunder to the extent such plan or arrangement is subject to Section 409A of the Code and so as to avoid any tax, interest or penalty thereunder.

(i) Neither the execution and delivery of this Agreement nor the approval or consummation of the transactions contemplated hereby, either alone or together with any other event, will or would reasonably be expected to, result in any “excess parachute payment” (as such term is defined in Section 280G(b)(1) of the Code). Neither the Company nor any of its

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Subsidiaries has any obligation to gross-up, indemnify, or otherwise reimburse any Person for any Tax incurred by such Person, including under Section 409A, 457A or 4999 of the Code.

Section 3.12 Labor and Employment Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to any labor or collective bargaining Contract that pertains to employees of the Company or any of its Subsidiaries. There are no, and during [REDACTED] have been no, organizing activities or collective bargaining arrangements that could affect the Company or any of its Subsidiaries pending or under discussion with any labor organization or group of employees of the Company or any of its Subsidiaries. There is no, and during [REDACTED] there has been no, labor dispute, strike, controversy, slowdown, work stoppage or lockout pending or threatened against or affecting the Company or any of its Subsidiaries, nor is there any basis for any of the foregoing. Neither the Company nor any of its Subsidiaries has breached or otherwise failed to comply with the provisions of any collective bargaining or union Contract to which the Company or any such Subsidiary is party. There are no pending or threatened union grievances or union representation questions involving employees of the Company or any of its Subsidiaries.

(b) The Company is and during [REDACTED] has been in compliance in all material respects with applicable Laws respecting employment, including discrimination or harassment in employment, terms and conditions of employment, termination of employment, wages, overtime classification, hours, occupational safety and health, employee whistle-blowing, immigration, employee privacy, employment practices and classification of employees, consultants and independent contractors. Neither the Company nor any of its Subsidiaries have taken any action that triggered any notice obligations under the WARN Act or any similar state or local Laws. The Company and its Subsidiaries are not and have not during [REDACTED] been the subject of any audit or other Action by any Governmental Authority, concerning compliance with any Law concerning authorization to work in the United States.

(c) The Company is not engaged in any unfair labor practice, as defined in the National Labor Relations Act. No unfair labor practice or labor charge or complaint is pending or threatened in writing with respect to the Company or any of its Subsidiaries before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental Authority.

(d) The Company and each of its Subsidiaries has withheld and paid to the appropriate Governmental Authority all amounts required to be withheld from employees of the Company or any of its Subsidiaries and are not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any applicable Laws relating to the employment of labor. The Company and each of its Subsidiaries has paid in full to its employees or adequately accrued for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees.

(e) The Company and each of its Subsidiaries is not a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to employees or employment practices. The Company and each of its Subsidiaries has not received within [REDACTED] any written notice of intent by any Governmental Authority

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responsible for the enforcement of labor or employment laws to conduct an investigation relating to the Company or any of its Subsidiaries and no such investigation is in progress.

(f) During [REDACTED], (i) no allegations of workplace sexual harassment, discrimination or other misconduct have been made, initiated, filed or threatened against the Company, any of its Subsidiaries or any of their respective current or former directors, officers or senior level management employees, (ii) no incidents of any such workplace sexual harassment, discrimination or other misconduct have occurred, and (iii) neither the Company nor any of its Subsidiaries has entered into any settlement agreement related to allegations of sexual harassment, discrimination or other misconduct by any of their directors, officers or employees described in clause (i) hereof or any independent contractor.

Section 3.13 Title to, Sufficiency and Condition of Assets.

(a) The Company and its Subsidiaries have good and valid title to or a valid leasehold interest in all of their material assets, including all of the assets reflected on the Interim Financial Statements or acquired in the ordinary course of business since [REDACTED], except those sold or otherwise disposed of for fair value since [REDACTED] in the ordinary course of business consistent with past practice. The assets owned or leased by the Company and its Subsidiaries constitute all of the assets necessary for the Company and its Subsidiaries to carry on their respective businesses as currently conducted. None of the assets owned or leased by the Company or any of its Subsidiaries is subject to any Encumbrance, other than Permitted Encumbrances.

(b) All tangible assets owned or leased by the Company or its Subsidiaries have been maintained in all material respects in accordance with generally accepted industry practice, are in all material respects in good operating condition and repair, ordinary wear and tear excepted, and are adequate for the uses to which they are being put.

(c) Immediately subsequent to the Closing, the Company and its Subsidiaries will own or have a valid license to all assets, properties and rights currently used in the conduct or operation of their business.

Section 3.14 Real Property.

(a) Schedule 3.14(a) of the Disclosure Schedules sets forth a true and complete list of all Owned Real Property and all Leased Real Property. Each of the Company and its Subsidiaries has (i) good and marketable title in fee simple to all Owned Real Property and (ii) good and marketable leasehold title to all Leased Real Property, in each case, free and clear of all Encumbrances except Permitted Encumbrances. No parcel of Owned Real Property or Leased Real Property is subject to any governmental decree or order to be sold or is being condemned, expropriated, re-zoned or otherwise taken by any public authority with or without payment of compensation therefore, nor has any such condemnation, expropriation or taking been proposed. All leases of Leased Real Property and all amendments and modifications thereto are in full force and effect, and there exists no default under any such lease by the Company, any of its Subsidiaries or any other party thereto, nor any event which, with notice or lapse of time or both, would constitute a default thereunder by the Company, any of its Subsidiaries or any other party thereto.

(b) There are no binding contractual or legal restrictions that preclude or restrict the ability to use any Owned Real Property or Leased Real Property by the Company or any of its Subsidiaries for the current use of such real property. There are no material latent defects or material adverse physical conditions affecting the Owned Real Property or Leased Real Property. All plants, warehouses, distribution centers, structures and other buildings on the Owned Real Property or Leased Real Property are adequately maintained by the Company or its Subsidiaries, as applicable, and are in good operating condition and repair for the requirements of the business of the Company and its Subsidiaries as currently conducted.

Section 3.15 Intellectual Property.

(a) Schedule 3.15 of the Disclosure Schedules sets forth a true and complete list of all registered and material unregistered Marks (including domain names), issued Patents and registered Copyrights, including any pending applications to register any of the foregoing, owned (in whole or in part) by or exclusively licensed to the Company or any of its Subsidiaries.

(b) No registered Mark identified on Schedule 3.15 of the Disclosure Schedules is, or has been in [REDACTED], involved in any opposition or cancellation proceeding and no such proceeding has been threatened against the Company in writing with respect to any of such Marks. No issued Patent identified on Schedule 3.15 of the Disclosure Schedules is, or has been in [REDACTED], involved in any interference, reissue or reexamination proceeding and no such proceeding is or has been threatened in writing with respect thereto any of such Patents.

(c) The Company or its Subsidiaries exclusively owns, free and clear of any and all Encumbrances (other than Permitted Encumbrances), all Company Intellectual Property. The Company has a valid right to use all other Intellectual Property that is used in the Company's and its Subsidiaries' business pursuant to a written license agreement. Neither the Company nor any of its Subsidiaries has received written notice of any claim challenging the Company's ownership of any of the Company Intellectual Property, nor is there a reasonable basis for any claim that the Company does not so own any of such Company Intellectual Property. Seller has not received any written notice of any claim challenging the ownership of any of the Company Intellectual Property, and to Seller's knowledge there is no reasonable basis for any claim that the Company does not so own any such Company Intellectual Property.

(d) The Company and its Subsidiaries have taken reasonable measures to protect the secrecy, confidentiality of all Trade Secrets used in the business of the Company and its Subsidiaries (collectively, "Business Trade Secrets"). None of the Business Trade Secrets have been disclosed or authorized to be disclosed to any Person other than to employees or agents of the Company or its Subsidiaries for use in connection with the business of the Company or its Subsidiaries or pursuant to a confidentiality or non-disclosure agreement that reasonably protects the interest of the Company in and to such matters. No unauthorized disclosure of any Business Trade Secrets has occurred. No present or former employee, officer or director of the Company or its Subsidiaries, or agent, outside contractor or consultant of the Company or its Subsidiaries, owns any Company Intellectual Property.

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(e) All registered Marks, issued Patents and registered Copyrights identified on Schedule 3.15 of the Disclosure Schedules (“Company Registered IP”) are valid and subsisting and enforceable, and neither the Company nor any of its Subsidiaries have received written notice of any claim challenging the validity or enforceability of any Company Registered IP or alleging any misuse of such Company Registered IP.

(f) As of the Closing, all domain names used by each of the Company and its Subsidiaries are registered in the name of the Company or applicable Subsidiary and held in hosting accounts associated with a Company email address, and all login credentials (e.g., usernames and passwords) for such accounts are under the sole control of employees of the Company or the applicable Subsidiary.

(g) The development, manufacture, sale, distribution or other commercial exploitation of products, and the provision of any services, by or on behalf of the Company or any of its Subsidiaries, and all of the other activities or operations of the Company or any of its Subsidiaries do not (and have not [REDACTED]) infringe upon, misappropriate, or otherwise violate any Intellectual Property of any third party, and neither the Company nor any of its Subsidiaries have received written notice of any claim asserting or suggesting that any such infringement is occurring, nor to the knowledge of the Seller, is there a reasonable basis therefor. No Intellectual Property owned by or licensed to the Company or its Subsidiaries is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the use or licensing thereof by the Company or its Subsidiaries. No third party is misappropriating, infringing, diluting or violating any Intellectual Property owned by or exclusively licensed to the Company or any of its Subsidiaries in a material manner.

(h) Neither Company nor any of its Subsidiaries have transferred ownership of, or granted any exclusive license with respect to, any material Company Intellectual Property. Immediately upon the consummation of the Closing, the Company shall possess all of the Intellectual Property rights necessary for the conduct of the conduct of the Company’s and its Subsidiaries’ business as they are currently conducted, on substantially the same terms and exercisable in all material respects to the same extent as by the Company and its Subsidiaries prior to the Closing.

Section 3.16 Taxes.

(a) All Returns required to be filed by or with respect to the Company and its Subsidiaries have been timely filed, and all such Returns are true, correct and complete in all respects. Each of the Company and its Subsidiaries has timely paid all Taxes due and owing by it whether or not such Taxes are shown on any Return.

(b) The unpaid Taxes of the Company for periods (or portions thereof) ending on or prior to the date of the Interim Financial Statements do not exceed the accruals for current Taxes included in the Interim Financial Statements (not to include any reserve for deferred Taxes established to reflect timing differences between book and Tax income), and no amount of unpaid Taxes of the Company or its Subsidiaries has been incurred since [REDACTED] [REDACTED] other than in the ordinary course of business of the Company and consistent

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with such amounts previously paid with respect to such Taxes for similar periods in prior years, adjusted for changes in ordinary course operating results.

(c) Each of the Company and its Subsidiaries has charged, collected, withheld, deducted or paid all Taxes required to have been charged, collected, withheld, deducted or paid in connection with amounts owing to any employee, independent contractor, creditor, stockholder or other third party. Each of the Company and its Subsidiaries has timely remitted all withheld Taxes to the proper Governmental Authority.

(d) Neither the Company nor any of its Subsidiaries has agreed to, or been requested to consent to, any waiver of the statute of limitations or any extension of time with respect to a Tax assessment, Tax deficiency, or applicable to any Return filed by or on behalf of the Company, which waiver or extension remains outstanding (or would remain outstanding, if consented to).

(e) There are no Actions with respect to Taxes (each, a “Tax Proceeding”) by any Governmental Authority threatened in writing, pending or being conducted against the Company or any of its Subsidiaries. All deficiencies asserted or assessments made as a result of any Tax Proceeding conducted against the Company or any of its Subsidiaries have been fully paid.

(f) No claim has been made by a Governmental Authority in a jurisdiction where the Company and its Subsidiaries do not file a particular kind of Return or pay a particular Tax that indicates the Company or any of its Subsidiaries is, or may be, required to file such Return or pay such Tax. The Company has not commenced a voluntary disclosure proceeding in any jurisdiction that has not been fully resolved or settled.

(g) Neither the Company nor any of its Subsidiaries is a party to, or bound by, any Tax allocation, Tax sharing, Tax receivable, Tax indemnity Contract or other similar Contract with respect to Taxes.

(h) Neither the Company nor any of its Subsidiaries has been a member of, or filed or been included in, a combined, consolidated, unitary or similar Return. The Company does not have any liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law) as a result of transferee liability, successor liability, or joint or several liability, by Contract or otherwise.

(i) Neither the Company nor any of its Subsidiaries has ever been engaged in, been a party to or a promoter of any “reportable transaction” as defined in Treasury Regulation Section 1.6011-4(b)(1) (or any similar provision of state, local or non-U.S. Law).

(j) Neither the Company nor any of its Subsidiaries is subject to, nor has any of the Company or its Subsidiaries applied for, any private letter ruling of the IRS, request for administrative relief, request for technical advice, request for a change of any method of accounting, or comparable rulings of any Governmental Authority. Neither the Company nor any of its Subsidiaries has granted to any Person any power of attorney that is currently in force with respect to any Tax matter involving the Company.

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(k) There is no Encumbrance for Taxes upon the assets of, or the equity interest in, the Company (other than Permitted Encumbrances).

(l) Neither the Company nor the Buyer (by reason of its ownership of the Company) will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date to the extent such item is economically attributable to a taxable period (or portion thereof) ending on or before the Closing Date, including as a result of (i) any closing or similar agreement with any Governmental Authority executed on or prior to the Closing Date, (ii) the installment method of accounting or a change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing Date, (iii) Section 481 of the Code (or similar provisions of state, local or non-U.S. Law), (iv) any excess loss account described in the Treasury Regulations under Section 1502 of the Code (or any similar provision of state, local or non-U.S. Law) existing on the Closing Date, (v) any prepaid amount received or deferred revenue accrued on or prior to the Closing Date outside the ordinary course of business, (vi) the application of any Pandemic Response Laws, (vii) the application of Section 951 or Section 951A of the Code with respect to income attributable to the period prior to the Closing Date pursuant to the Section 6.1, or (viii) the application of Treasury Regulations Section 1.1502-6 (or any similar provision of state, local and non-U.S. Law) made on or prior to the Closing.

(m) Neither the Company nor the Buyer (by reason of its ownership of the Company) will be required to pay any Tax attributable to Seller pursuant to Section Section 6.1 as a result of an election under Section 965(h) of the Code or any action taken pursuant to any Pandemic Response Laws (including as a result of deferral of any Taxes under any Pandemic Response Laws or any application for or receipt of any loan or other funds pursuant to any Pandemic Response Laws).

(n) All related-party transactions have been made on an arm's-length basis and all transfer pricing documentation has been kept and filed in compliance with relevant Law and all transactions, agreements, arrangements, acquisitions or disposals to which the Company or any of its Subsidiaries is a party or otherwise involved in have been made on arm's-length terms and the Company and each of its Subsidiaries maintains and holds adequate books and records for the purposes of evidencing that arm's-length terms have been applied.

(o) The Company and each of its Subsidiaries is not, and has never been, a resident in a jurisdiction other than its jurisdiction of formation or incorporation (as applicable) for any Tax purposes. The Company does not have any permanent establishments or permanent representatives (within the meaning of an applicable double Tax treaty, or where no such treaty applies, applicable Tax laws) or any offices or fixed places of business that would, in each case, result in an obligation of the Company or any of its Subsidiaries to pay Taxes or file Returns in a country other than the country in which it is organized.

(p) Each of the Company and the Seller (i) is a "United States person" within the meaning of Section 7701(a)(30) of the Code and (ii) is not a "foreign person" within the meaning of Section 1445 of the Code.

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(q) The Company is, and has been since [REDACTED], properly classified as a partnership for U.S. federal (and applicable state, local and non-U.S.) income Tax purposes. The Company has not filed any election (including on IRS Form 8832 or any similar state, local or non-U.S. forms) to be classified other than according to the Company's default entity classification under applicable Law.

(r) The Company did not file any election under the Partnership Tax Audit Rules to cause the Partnership Tax Audit Rules to apply to any taxable year (or other period) of the Company beginning [REDACTED].

(s) Each of the Company and its Subsidiaries has provided reasonable documentation or other proof of compliance with any applicable Tax holiday or other similar incentives, and such compliance shall not be negatively affected by the transactions contemplated by this Agreement.

(t) There are no Tax credits, refunds owing, grants or similar amounts that are or could be subject to clawback or recapture as a result of (A) the transactions contemplated by this Agreement or (B) a failure by the Company or its Subsidiaries to satisfy one or more requirements on which the credit, refund, grant, or similar amount is or was conditioned.

(u) Neither the Seller nor any of the Company or its Subsidiaries has purchased or sold (or entered into any agreement or arrangement to purchase or sell), or sought payment in respect of, any Tax credit pursuant to Sections 6417 or 6418 of the Code.

(v) The Company has properly made an election under Section 754 of the Code (and similar provisions of state and local Law) that is effective for the taxable year in which the Closing will occur. No action has been taken to revoke the election described in the preceding sentence.

Section 3.17 Environmental Matters.

(a) Except as set forth on Schedule 3.17(a) of the Disclosure Schedules:

(i) Each of the Company and its Subsidiaries is in compliance with all applicable Environmental Laws. None of the Company or any of its Subsidiaries has received during [REDACTED] any written notice from a Governmental Authority or other Person alleging that the Company has any material liability under any Environmental Law or is not in compliance with any Environmental Law in all material respects.

(ii) No Hazardous Substances are present at the Real Property and there is and has been no Release of Hazardous Substances at the Real Property (A) that would require notification to a Governmental Authority or investigation by the Company or any of its Subsidiaries or (B) would be reasonably likely to give rise to liability to the Company or any of its Subsidiaries pursuant to any Environmental Laws. No underground improvement, including any treatment or storage tank or water, gas or oil well, is or has been located on any property described in the foregoing sentence.

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(iii) There is no pending or threatened investigation by any Governmental Authority, nor any pending or threatened Action with respect to the Company or any of its Subsidiaries relating to Hazardous Substances or otherwise under any Environmental Law.

(iv) Each of the Company and its Subsidiaries holds all Environmental Permits necessary for the conduct of its business and is in compliance therewith in all material respects.

(b) The Company and its Subsidiaries have provided the Buyer with access to all permits, audits and other reports pertaining to compliance with Environmental Law and all “Phase I,” “Phase II” or other environmental reports in their possession, or to which they have reasonable access, addressing every location ever owned, operated or leased by the Company or any of its Subsidiaries or at which the Company or any of its Subsidiaries actually, potentially or allegedly may have liability under any Environmental Law.

(c) For purposes of this Agreement:

(i) “Environmental Laws” means: any Laws of any Governmental Authority relating to (A) Releases or threatened Releases of Hazardous Substances or materials containing Hazardous Substances; (B) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances or materials containing Hazardous Substances; or (C) pollution or protection of the environment, health, safety or natural resources.

(ii) “Environmental Permits” means all Permits required under any Environmental Law.

(iii) “Hazardous Substances” means: (A) those substances defined in or regulated under the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), the Clean Water Act, the Safe Drinking Water Act, the Atomic Energy Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act and the Clean Air Act, and their state counterparts, as each may be amended from time to time, and all regulations thereunder; (B) petroleum and petroleum products, including crude oil and any fractions thereof; (C) natural gas, synthetic gas, and any mixtures thereof; (D) lead, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos and radon; (E) any other pollutant or contaminant; and (F) any substance, material or waste regulated by any Governmental Authority pursuant to any Environmental Law.

(iv) “Release” has the meaning set forth in Section 101(22) of CERCLA (42 U.S.C. § 9601(22)), but not subject to the exceptions in Subsections (A) and (D) of 42 U.S.C. § 9601(22).

(v) “Remediation” means (A) any remedial action, remedy, response or removal action as those terms are defined in 42 U.S.C. § 9601, (B) any corrective action as that term has been construed pursuant to 42 U.S.C. § 6924, and (C) any measures or actions required or undertaken to investigate, assess, evaluate, monitor, or otherwise delineate the presence or

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Release of any Hazardous Substance in or into the environment or to prevent, clean up or minimize a Release or threatened release of Hazardous Substances.

Section 3.18 Material Contracts.

(a) Except as set forth on Schedule 3.18(a) of the Disclosure Schedules, neither the Company nor any of its Subsidiaries is a party to or is bound by any Contract of the following nature (such Contracts as are required to be set forth on Schedule 3.18(a) of the Disclosure Schedules being “Material Contracts”):

(i) any Contract in respect of railcar operations, railcar storage, freight operations, railcar repair or running repair services or the leasing of tracks or other rail assets;

(ii) any interchange Contract;

(iii) any Contract for the acquisition or disposition of assets required for the procurement, construction, operation, storage, repair and/or maintenance of railroads, tracks or other rail assets;

(iv) any Contract relating to Indebtedness, other than Indebtedness for an amount less than [REDACTED] individually or in the aggregate;

(v) any Contract pursuant to which the Company or any of its Subsidiaries has provided funds to or made any loan, capital contribution or other investment in, or assumed any liability or obligation of, any Person, including take-or-pay contracts or keepwell agreements;

(vi) any Contract with any Governmental Authority;

(vii) any Contract with any Related Party of the Company or any of its Subsidiaries;

(viii) any employment or consulting Contract that (i) involves an aggregate future or potential liability in excess of [REDACTED], or (ii) provides for severance, change in control, retention, or similar payments or benefits;

(ix) any Contract that limits, or purports to limit, the ability of the Company or any of its Subsidiaries to compete in any line of business or with any Person or in any geographic area or during any period of time, or that restricts the right of the Company and its Subsidiaries to sell to or purchase from any Person or to hire any Person, or that grants the other party or any third person “most favored nation” status or any type of special discount rights;

(x) any Contract that requires a consent to or otherwise contains a provision relating to a “change of control,” or that would prohibit or delay the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements;

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(xi) any Contract pursuant to which the Company or any of its Subsidiaries is the lessee or lessor of, or holds, uses, or makes available for use to any Person (other than the Company or a Subsidiary thereof), (A) any real property or (B) any tangible personal property and, in the case of clause (B), that involves an aggregate future or potential liability or receivable, as the case may be, in excess of [REDACTED];

(xii) any Contract for the sale or purchase of any real property, or for the sale or purchase of any tangible personal property in an amount in excess of [REDACTED];

(xiii) any Contract providing for indemnification to or from any Person with respect to liabilities relating to any current or former business of the Company, any of its Subsidiaries or any predecessor Person, other than any ordinary course indemnification obligations for *de minimis* amounts;

(xiv) any Contract pursuant to which the Company or any of its Subsidiaries (a) grants a license to a third party to any Company Intellectual Property, other than non-exclusive licenses granted to customers in the ordinary course of business, or (b) receives a license to third party Intellectual Property, other than commercially available, off-the-shelf, non-exclusive object code software licenses;

(xv) any joint venture or partnership, merger, asset or stock purchase or divestiture Contract relating to the Company or any of its Subsidiaries;

(xvi) any Contract with any labor union or collectively bargaining organization;

(xvii) any Contract for the purchase of any debt or equity security or other ownership interest of any Person, or for the issuance of any debt or equity security or other ownership interest, or the conversion of any obligation, instrument or security into debt or equity securities or other ownership interests of, the Company or any of its Subsidiaries;

(xviii) any Contract relating to settlement of any administrative or judicial proceedings within [REDACTED];

(xix) any Contract that results in any Person holding a power of attorney from the Company or any of its Subsidiaries that relates to the Company, any of its Subsidiaries or any of their respective businesses that is currently in effect; and

(xx) any other Contract, whether or not made in the ordinary course of business that (A) involves a future or potential liability or receivable, as the case may be, in excess of [REDACTED] on an annual basis or in excess of [REDACTED] over the current Contract term, (B) has a term greater than one year and cannot be cancelled by the Company or a Subsidiary of the Company without penalty or further payment and without more than 30 days' notice or (C) is material to the business, operations, assets, financial condition, results of operations or prospects of the Company and its Subsidiaries, taken as a whole.

(b) Each Material Contract is a legal, valid, binding and enforceable agreement and is in full force and effect. None of the Company, any of its Subsidiaries, or any other party is

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in breach or violation of, or (with or without notice or lapse of time or both) default under, any Material Contract, nor has the Company received any written claim of any such breach, violation or default. The Company has provided Buyer with access to true and complete copies of all Material Contracts, including any amendments thereto.

Section 3.19 Affiliate Interests and Transactions. Schedule 3.19 of the Disclosure Schedules contains a list of all intercompany and intracompany accounts or contracts between the Company and its Subsidiaries, on the one hand, and the Seller, any Affiliates of the Seller (other than the Company and its Subsidiaries), or any Related Party of the Seller, on the other hand (collectively, the “Seller Affiliated Agreements”). Except as set forth on Schedule 3.19 of the Disclosure Schedules:

(a) No Related Party of the Seller or the Company or any of its Subsidiaries: (i) owns or has owned, directly or indirectly, any equity or other financial or voting interest in any competitor, supplier, licensor, lessor, distributor, independent contractor or customer of the Company or any of its Subsidiaries or their business; (ii) owns or has owned, directly or indirectly, or has or has had any interest in any property (real or personal, tangible or intangible) that the Company or any of its Subsidiaries uses or has used in or pertaining to the business of the Company or any of its Subsidiaries; (iii) has or has had any business dealings or a financial interest in any transaction with the Company or any of its Subsidiaries or involving any assets or property of the Company or any of its Subsidiaries, other than business dealings or transactions conducted in the ordinary course of business at prevailing market prices and on prevailing market terms; or (iv) is or has been employed by the Company or any of its Subsidiaries.

(b) Except for this Agreement, there are no Contracts by and between the Company or any of its Subsidiaries, on the one hand, and any Related Party of the Seller or the Company or any its Subsidiaries, on the other hand, pursuant to which such Related Party provides or receives any information, assets, properties, support or other services to or from the Company or any of its Subsidiaries (including Contracts relating to billing, financial, tax, accounting, data processing, human resources, administration, legal services, information technology and other corporate overhead matters).

(c) There are no outstanding notes payable to, accounts receivable from or advances by the Company or any of its Subsidiaries to, and neither the Company nor any of its Subsidiaries is otherwise a debtor or creditor of, or has any liability or other obligation of any nature to, the Seller, any Related Party of the Seller or the Company or any of its Subsidiaries. Since [REDACTED], neither the Company nor any of its Subsidiaries has incurred any obligation or liability to, or entered into or agreed to enter into any transaction with or for the benefit of, any Related Party of the Seller or the Company or any of its Subsidiaries, other than the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 3.20 Insurance. Schedule 3.20 of the Disclosure Schedules sets forth a true and complete list of all casualty, directors and officers liability, general liability, product liability and all other types of insurance policies maintained with respect to the Company or any of its Subsidiaries, together with the carriers and liability limits for each such policy. All such policies are in full force and effect and no application therefor included a material misstatement or omission. All premiums with respect thereto have been paid to the extent due. The Seller has not

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received notice of, nor to the knowledge of the Seller is there threatened, any cancellation, termination, reduction of coverage or material premium increases with respect to any such policy. Except as set forth on Schedule 3.20, no claim currently is pending under any such policy involving an amount in excess of [REDACTED]. Schedule 3.20 of the Disclosure Schedules identifies which insurance policies are “occurrence” or “claims made” and which Person is the policy holder. All material insurable risks in respect of the business and assets of the Company and its Subsidiaries are covered by such insurance policies and the types and amounts of coverage provided therein are usual and customary in the context of the business and operations in which the Company and its Subsidiaries are engaged.

Section 3.21 Privacy and Security.

(a) The Company complies (and requires and monitors the compliance of applicable third parties) in all material respects with all applicable Laws, reputable industry practice, and posted and internal agreements and policies, in each case relating to privacy or data security (all of the foregoing collectively, “Privacy Laws”).

(b) The Company and its Subsidiaries take all commercially reasonable steps to protect the operation, confidentiality, integrity and security of their respective Software, Systems and Websites and all information and transactions stored or contained therein or transmitted thereby against any unauthorized or improper use, access, transmittal, interruption, modification or corruption, and, to the knowledge of the Seller, there have been no material breaches of the same.

Section 3.22 Customers and Suppliers.

(a) Schedule 3.22(a) of the Disclosure Schedules sets forth a true and complete list of the names of all purchasers of the Company and its Subsidiaries with a billing for each such client of [REDACTED]. The Seller has not received any written notice or has any reason to believe that any of such clients (including the Seller and its Affiliates) (A) has ceased or substantially reduced, or will cease or substantially reduce, use of products or services of the Company or its Subsidiaries or (B) has sought, or is seeking, to reduce the price it will pay for the services of the Company or its Subsidiaries. None of such clients has otherwise threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement.

(b) Schedule 3.22(b) of the Disclosure Schedules sets forth a true and complete list of all suppliers of the Company and its Subsidiaries from which the Company or a Subsidiary ordered products or services with an aggregate purchase price for each such supplier of [REDACTED]. The Seller has not received any written notice of or has any reason to believe that there has been any material adverse change in the price of such supplies or services provided by any such supplier (including the Seller and its Affiliates), or than any such supplier (including the Seller and its Affiliates) will not sell supplies or services to the Company and its Subsidiaries at any time after the Closing Date on terms and conditions substantially the same as those used in its current sales to the Company and its Subsidiaries, subject to general and customary price increases. No such supplier has otherwise

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threatened to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement.

Section 3.23 CFIUS. Neither the Company nor any of its Subsidiaries engages in (a) the “design, fabrication, development, testing, production or manufacture” of one or more “critical technologies” within the meaning of Section 721 of the U.S. Defense Production Act of 1950, as amended (the “DPA”); (b) ownership, operation, maintenance, supply, or servicing of “covered investment critical infrastructure” within the meaning of the DPA (where such activities are covered by column 2 of Appendix A to 31 C.F.R. Part 800); or (c) maintenance or collection, directly or indirectly, of “sensitive personal data” of U.S. citizens within the meaning of the DPA.

Section 3.24 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Seller or the Company.

Section 3.25 No Other Representations and Warranties. Except for the representations and warranties contained in this Article 3 (including the related portions of the Disclosure Schedules, the Ancillary Agreements and any certificate delivered pursuant to the terms hereof), the Seller has not made and does not make any other express or implied representation or warranty, either written or oral, on behalf of the Seller or with respect to the Company; provided, however, that that nothing in this Section Section 3.25 shall serve to limit or reduce in any manner the scope of any of the express representations and warranties made by the Company or the Seller in this Article 3 or the Buyer’s rights to recovery in the case of Fraud. Notwithstanding the foregoing, nothing in this Section Section 3.25 shall be deemed to be a waiver of, or otherwise limit, restrict, modify or impair, any claim or right of the Buyer based upon or related to Fraud.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby represents and warrants to the Seller as follows:

Section 4.1 Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has full limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

Section 4.2 Authority. The Buyer has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which the Buyer will be a party and the consummation by the Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action. This Agreement has been, and upon their execution each of the Ancillary Agreements to which the Buyer will be a party will have been, duly executed and delivered by the Buyer and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon their execution each of the Ancillary

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Agreements to which the Buyer will be a party will constitute, the legal, valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms.

Section 4.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which the Buyer will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the certificate of formation or operating agreement of the Buyer;

(ii) conflict with or violate any Law applicable to the Buyer; or

(iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under or require any consent of any Person pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other Contract to which the Buyer is a party;

except for any such conflicts, violations, breaches, defaults or other occurrences that do not, individually or in the aggregate, materially impair the ability of the Buyer to consummate, or prevent or materially delay, any of the transactions contemplated by this Agreement or the Ancillary Agreements or would reasonably be expected to do so.

(b) The Buyer is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which it will be party or the consummation of the transactions contemplated hereby or thereby, except for such filings as may be required by any applicable federal or state securities or “blue sky” laws.

Section 4.4 Financing. The Buyer has sufficient funds to permit the Buyer to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 4.5 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Buyer.

Section 4.6 Investment Intent. The Buyer is acquiring the Units for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the Units in a manner that would violate the registration requirements of the Securities Act of 1933, as amended.

Section 4.7 Independent Investigation.

(a) The Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company, and acknowledges that it has been provided adequate access to the

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personnel, properties, assets, premises, books and records, and other documents and data of Seller and the Company for such purpose.

(b) The Buyer acknowledges that (i) none of the Seller, the Company, nor any other Person acting on behalf of Seller or the Company has made any representation or warranty, expressed or implied, as to the Company or the Units, or the accuracy or completeness of any information regarding the Company or the Units furnished or made available to Buyer and its Representatives, or any other matter related to the transactions contemplated herein, other than those representations and warranties expressly set forth in Article 3 of this Agreement (and including the related portions of the Disclosure Schedules, the Ancillary Agreements and any certificate delivered pursuant to the terms hereof), (ii) in determining to enter into this Agreement, Buyer has not relied on any representation or warranty from Seller, the Company or any other Person on behalf of Seller or the Company, or upon the accuracy or completeness of any information regarding the Company or the Units furnished or made available to Buyer and its Representatives, other than those representations and warranties expressly set forth in Article 3 of this Agreement (and including the related portions of the Disclosure Schedules, the Ancillary Agreements and any certificate delivered pursuant to the terms hereof), and (iii) none of Seller, the Company or any other Person acting on behalf of Seller or the Company shall have any liability to Buyer or any other Person with respect to any projections, forecasts, estimates, plans, or budgets of future revenue, expenses, or expenditures, future results of operations, future cash flows, or the future financial condition of the Company or the future business, operations, or affairs of the Company, except as expressly set forth in Article 3 of this Agreement (and including the related portions of the Disclosure Schedules, the Ancillary Agreements and any certificate delivered pursuant to the terms hereof). Notwithstanding the foregoing, nothing in this Section 4.7 shall be deemed to be a waiver of, or otherwise limit, restrict, modify or impair, any claim or right of the Buyer based upon or related to Fraud.

ARTICLE V COVENANTS

Section 5.1 Intercompany Arrangements. The Seller Affiliated Agreements shall be cancelled without any consideration or further liability to any party and without the need for any further documentation, immediately prior to the Closing.

Section 5.2 Resignations. The Seller will deliver at the Closing the resignation of the directors of the Company and its Subsidiaries set forth on Schedule 2.2(b)(v).

Section 5.3 Transfer of Permits. Prior to the Closing, the Seller will duly and validly transfer or cause to be transferred to the Company without any consideration all Permits that are held in the name of the Seller, any Affiliates of the Seller (other than the Company or any of its Subsidiaries), or any Related Party of the Seller on behalf of the Company or any of its Subsidiaries and used in connection with the business of the Company and its Subsidiaries, as set forth on Schedule 5.3, and the representations, covenants and agreements contained herein shall apply to such Permits as if held by the Company on the date hereof.

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Section 5.4 Further Assurances.

(a) The parties agree that, in the event that any consent, approval or authorization necessary or desirable to preserve for the Company or any of its Subsidiaries any material right or benefit under any lease, license, commitment or other Contract to which the Company or any Subsidiary is a party is not obtained prior to the Closing, the parties will, subsequent to the Closing, cooperate in good faith to attempt to obtain such consent, approval or authorization as promptly thereafter as practicable.

(b) From time to time after the Closing, and for no further consideration, each of the parties shall, and shall cause its Subsidiaries to, execute, acknowledge and deliver such assignments, transfers, consents, assumptions and other documents and instruments and take such other actions as may be necessary or desirable to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 5.5 Public Announcements. Reasonably promptly following the Closing Date, Buyer and Seller shall issue a press release announcing the Agreement and the consummation of the transactions contemplated hereby in the form attached as Annex D hereto (the “Closing Press Release”). Other than the Closing Press Release, no party shall issue any press release or make any public statement with respect to this Agreement or the transactions contemplated hereby without the consent of the other party; provided, that no approval of or notice to Seller shall be necessary with respect to any disclosure of this Agreement or the transactions contemplated hereby required to be made by Buyer under applicable Law.

Section 5.6 Trademark Matters; Domain Names.

(a) Following the third anniversary of the Closing, the Buyer shall cause the Company to transfer to the Seller all of the Company’s right, title and interest in and to the Marks set forth on Schedule 5.6, which shall include, for the avoidance of doubt, [REDACTED] (the “Seller Marks”). The Buyer covenants and agrees that from the date that is six (6) months after the Closing (or such earlier date as determined by the Buyer), the Buyer shall, and shall cause the Company to, cease all use of the Seller Marks; provided, that (i) the Company shall be permitted to continue to sell down any inventory of products or other materials (including marketing materials and stationery) in existence or in manufacture at such time, and (ii) the Company shall be permitted to continue to use the Seller Marks for archival purposes and as otherwise required by applicable Law.

(b) Prior to the Closing Date, the Company shall provide on Schedule 5.6(b) a list setting forth (i) all of the usernames and passwords for each of (A) the domain names, online accounts and/or websites used by the Company, in connection with the Business or otherwise included in the Company Intellectual Property, including the website and domain name [REDACTED], and (B) all social media accounts used by the Company, in connection with the Business or otherwise included in the Company Intellectual Property; and (ii) all of the names of the registrars, registration dates and expiration dates for all domain names included in the Company Intellectual Property. For purposes of this Agreement, the “Business” means [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Section 5.7 Director and Officer Indemnification and Insurance.

(a) Buyer agrees that all rights to indemnification, advancement of expenses and exculpation by the Company now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer or manager of the Company, as provided in the organizational documents of the Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof, shall survive the Closing Date and shall continue in full force and effect for a period of [REDACTED].

(b) The Company shall, and Buyer shall cause the Company to, obtain as of the Closing Date a non-cancelable directors and officers “tail” insurance policy with a claims period of [REDACTED] from the Closing Date.

(c) The obligations of Buyer under this Section shall not be terminated or modified in such a manner as to disproportionately and adversely affect any manager or officer to whom this Section applies without the consent of such affected manager or officer (it being expressly agreed that the managers and officers to whom this Section applies shall be third-party beneficiaries of this Section, each of whom may enforce the provisions of this Section).

**ARTICLE VI
TAX MATTERS**

Section 6.1 Allocation of Taxes. The items of income, gain, loss, deduction and credit allocable to the Units for the taxable year in which the Closing Date occurs shall be apportioned between the Seller and the Buyer using the “interim closing method” and the “calendar day convention” pursuant to Treasury Regulations Section 1.706-4.

Section 6.2 Tax Returns. The Buyer shall have the sole and exclusive authority to prepare and file, or cause to be prepared and filed, all Returns of the Company after the Closing Date.

Section 6.3 Transfer Taxes. Any Transfer Taxes shall be borne 50-50 by Buyer and Seller. The party required to file all necessary Returns and other documentation with respect to Transfer Taxes shall file such Returns and information and shall provide copies of such documentation and Returns to the other parties.

Section 6.4 Post-Closing Audit. The Seller shall promptly revoke (or cause to be revoked) any prior designation of, and re-designate (or cause to be redesignated) the Buyer (or its designee, as applicable) as the “partnership representative” and/or “designated individual” (in each case within the meaning of the Partnership Tax Audit Rules) with respect to the Company and each of its Subsidiaries, including for any taxable year including or prior to the Closing Date and (ii) not take any action that could reasonably be expected to impede, prohibit, or prevent (or that

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is otherwise inconsistent with) the designation of the Buyer (or its designee, as applicable) as the “partnership representative” and/or “designated individual” for such years or period. As “partnership representative” and/or “designated individual,” the Buyer (or its designee, as applicable) shall be authorized to make any and all decisions with respect to Taxes of or with respect to the Company.

Section 6.5 Section 754 Election. The Buyer shall have the sole discretion to cause the Company to make a valid election pursuant to Section 754 of the Code (and similar provisions of state and local Law) for the taxable year of the Company during which the Closing occurs.

ARTICLE VII NON-SURVIVAL

Section 7.1 No Survival. The representations and warranties of the Company, the Seller and the Buyer contained in this Agreement and the Ancillary Agreements, and any schedule, certificate or other document delivered pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby, shall terminate at, and not survive, the Closing. Following the Closing, there will be no liability on the part of, nor will any claim be made by or against, any of the Company, the Seller or the Buyer, or any of their respective Affiliates, in respect of the representations and warranties contained in this Agreement or the Ancillary Agreements, other than claims against any party for such party’s Fraud. For the avoidance of doubt, (a) nothing in the foregoing shall limit any party’s recourse (or liability) for claims against any party for such party’s Fraud, and any such claim for Fraud will survive and can be made by a party until the expiration of the applicable statute of limitations; (b) nothing herein shall prevent the Buyer from seeking recovery, or recovering, under the R&W Insurance Policy; and (c) this Section 7.1 shall not limit any covenant or agreement of the parties, including any liability with respect thereto.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the party incurring such fees or expenses, whether or not such transactions are consummated.

Section 8.2 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party.

Section 8.3 Waiver. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement

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on the part of either party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.

Section 8.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or e-mail, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

- (i) if to the Seller, to:

Casey Cathcart

[REDACTED]
[REDACTED]
[REDACTED]

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

Benesch Friedlander Coplan & Aronoff LLP

[REDACTED]
127 Public Square, Suite 4900
Cleveland, Ohio 44114
[REDACTED]

- (ii) if to the Buyer or the Company, to:

Star America Rail HoldCo, LLC

c/o Tikehau Capital North America LLC

[REDACTED]
[REDACTED]
[REDACTED]

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

Gibson, Dunn & Crutcher LLP

200 Park Avenue

New York, New York 10166

[REDACTED]
[REDACTED]

Section 8.5 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall

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not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified.

Section 8.6 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) and the Ancillary Agreements constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the parties with respect to the subject matter hereof and thereof. Notwithstanding any oral agreement or course of conduct of the parties or their Representatives to the contrary, no party to this Agreement shall be under any legal obligation to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the parties.

Section 8.7 No Third-Party Beneficiaries. Except as provided in Article VII, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 8.8 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 8.9 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any party or its successors or assigns against the other party shall be brought and determined in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court, and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient.

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Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 8.10 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party, and any such assignment without such prior written consent shall be null and void; provided, however, that the Buyer may assign this Agreement to any Affiliate of the Buyer without the prior consent of the Seller; provided further, that no assignment shall limit the assignor's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 8.11 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to seek specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then in any state or federal court located in the State of Delaware, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

Section 8.12 Currency. All references to "dollars" or "\$" or "US\$" in this Agreement or any Ancillary Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 8.13 Disclosure Schedules. All section headings in the Disclosure Schedules correspond to the sections of this Agreement, but information provided in any section of the Disclosure Schedules shall constitute disclosure for purposes of each section of this Agreement where such information is relevant. Unless expressly provided otherwise, all capitalized terms used in the Disclosure Schedules shall have the respective meanings assigned to such terms in this Agreement. Certain information set forth in the Disclosure Schedules is included solely for informational purposes, and may not be required to be disclosed pursuant to this Agreement. No disclosure in the Disclosure Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission that any such breach or violation exists or has actually occurred. The inclusion of any information in the Disclosure Schedules shall not be deemed to be an admission or acknowledgment by Seller that in and of itself, such information is

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material to or outside the ordinary course of the business. The Company and Seller shall cooperate in good faith to prepare the Disclosure Schedules delivered pursuant to the terms hereof and each of them shall take such action as reasonably requested in connection with the preparation of the Disclosure Schedules.

Section 8.14 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 8.15 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.16 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 8.17 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 8.18 No Presumption Against Drafting Party. Each of the Buyer, the Seller, and the Company acknowledges that each party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

[The remainder of this page is intentionally left blank.]

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

STAR AMERICA RAIL HOLDCO, LLC

By: _____
Name:
Title:

CATHCART RAIL HOLDCO, LLC

By: _____
Name:
Title:

CATHCART, INC.

By: _____
Name:
Title:

EXHIBIT 3:
CAPTION

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36853

STAR AMERICA FUND II GP, LLC (ON BEHALF OF STAR AMERICA INFRASTRUCTURE FUND II, LP AND STAR AMERICA INFRASTRUCTURE FUND II (PARALLEL), LP) AND STAR AMERICA RAIL HOLDCO, LLC— CONTROL EXEMPTION—BELPRE INDUSTRIAL PARKERSBURG RAILROAD, LLC (“BIP”); BUCYRUS INDUSTRIAL RAILROAD, LLC (“BIR”); CORNHUSKER RAILROAD, LLC (“CNRR”)

Star America Fund II GP, LLC (on behalf of Star America Infrastructure Fund II, LP and Star America Infrastructure Fund II (Parallel), LP) and Star America Rail Holdco, LLC, all noncarriers (collectively, “Applicants”) have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of three non-connecting Class III railroads: Belpre Industrial Parkersburg Railroad, LLC (“BIP”), operating in Ohio and West Virginia; Bucyrus Industrial Railroad, LLC (“BIR”), operating in Ohio; and Cornhusker Railroad, LLC (“CNRR”), operating in Nebraska.

Applicants represent that they do not currently control any other railroad lines or carriers, and that (1) BIP, BIR, and CNRR do not connect with one another; (2) the transaction is not part of a series of anticipated transactions that would result in such interconnection; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. *See* 49 C.F.R. § 1180.2(d)(2).

Applicants further represent that the proposed transaction does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions here.

The earliest this transaction may be consummated is June 2, 2025, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(g) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by May 25, 2025 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36853, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on Applicants' representative, Amy Bohannon, Tikehau Capital, 9 West 57th Street, 45th Floor, New York, NY 10019, abohannon@tikehaucapital.com.

Board decisions and notices are available at www.stb.gov.

EXHIBIT 4: VERIFICATION

ATTESTATION

I, Jeff Chick, am Chief Executive Officer of Cathcart Rail Holdco, LLC. I verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified notice of exemption.

Executed on April 23, 2025 in Columbus (city), OH (state).

Signature

A handwritten signature in dark ink, appearing to read "Jeff Chick", is written over a horizontal line.