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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
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March 22, 2023
Part of
Public Record

DOCKET NO. FD 36685

MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC, ET AL.
—CONTROL EXEMPTION—
CAMP CHASE RAIL, LLC, CHESAPEAKE AND INDIANA RAILROAD
COMPANY, INC., AND VERMILION VALLEY RAILROAD COMPANY, INC.

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

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MIP V, MIP V Rail, LLC, and Gulf & Atlantic Railways, LLC*

Dated March 22, 2023

Filing Contains Color Images

FILED
March 22, 2023
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TRANSPORTATION BOARD

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

Macquarie Infrastructure Partners V GP, LLC (“MIP GP”) submits this Verified Notice of Exemption (“Verified Notice”) pursuant to 49 C.F.R. § 1180.2(d)(2) for the benefit of the Macquarie Infrastructure Partners V fund vehicle (“MIP V”), MIP V Rail, LLC (“MIP Rail”), and Gulf & Atlantic Railways, LLC (“G&A”)¹, all non-carriers, to acquire control of three Class III common carrier freight railroads: Camp Chase Rail, LLC (“Camp Chase”); Chesapeake and Indiana Railroad Company, Inc. (“CKIN”); and Vermilion Valley Railroad Company, Inc. (“VVRC”) (collectively, the “Target Railroads”). The Target Railroads are currently controlled by MB Rail IB, LLC (“MBR IB”).²

Pursuant to an Agreement dated as of March 17, 2023 (the “Purchase Agreement”), G&A has agreed to acquire from MBR IB 100% of the equity interests

¹ G&A was formerly known as RailUSA, LLC.

² See *MB Rail IB, LLC—Acquisition of Control Exemption—Chesapeake & Ind. R.R., et al.*, Docket No. FD 36413 (STB served September 10, 2021).

of the Target Railroads (such transaction that is the subject of this Verified Notice, the “Transaction”).³ G&A (directly) and MIP GP, MIP V, and MIP Rail (indirectly) currently control two rail common carriers, Grenada Railroad, LLC (“GRYR”) and Florida, Gulf & Atlantic Railroad, LLC (“FG&A”).⁴ As explained below, none of the Target Railroads connect with each other, nor do they connect with GRYR or FG&A. The Transaction is not part of a series of anticipated transactions that would connect the Target Railroads, GRYR, or FG&A with each other or with any railroad in their corporate family, and the Transaction does not involve a Class I carrier. Accordingly, the Transaction is exempt under the Board’s regulations at 49 C.F.R. § 1180.2(d)(2).

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

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

On March 17, 2023, G&A entered into a Purchase Agreement with MBR IB pursuant to which G&A will acquire 100% of the equity interests of the Target Railroads.⁵ Upon consummation of the transaction contemplated by the Purchase

³ As part of the Transaction, G&A will also acquire from MBR IB 100% of the equity interests of MB Rail IB Equipment NewCo, LLC, a non-carrier.

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

⁵ Immediately prior to closing of the Transaction, CKIN and VVRC, both currently Indiana corporations, will be converted to limited liability companies. Camp Chase is currently a Kansas limited liability company. G&A will then acquire 100% of the equity interests of the limited liability companies.

Agreement, G&A (directly) and MIP GP, MIP V, and MIP Rail (indirectly) will control the Target Railroads, as well as GRYR and FG&A.⁶

Camp Chase operates approximately 14 miles of track in Ohio.⁷ CKIN operates approximately 28 miles of track in northwestern Indiana.⁸ VVRC operates approximately 8.4 miles of track (including approximately 7.81 main line miles) in east-central Illinois and west-central Indiana.⁹

GRYR operates a 228-mile rail line in Mississippi pursuant to a lease with the North Central Mississippi Regional Railroad Authority. FG&A owns and operates 430 miles of track (including 373 main line miles) in Florida and Georgia. Both GRYR and FG&A are Class III carriers.

G&A is a Delaware limited liability company and is wholly owned by MIP Rail. MIP Rail, a Delaware limited liability company, is wholly owned (indirectly) by MIP V. MIP V is an Americas-focused infrastructure fund that is controlled by its general partner, MIP GP, a Delaware limited liability company.

⁶ Because G&A is wholly owned by MIP Rail, which is (indirectly) controlled by MIP GP, MIP GP may be deemed to (indirectly) control the Target Railroads, as well as GRYR and FG&A, for purposes of 49 U.S.C. § 11323 following consummation of the Transaction.

⁷ See *Camp Chase Rail, LLC—Acquisition & Operation Exemption—Camp Chase Ry.*, Docket No. FD 36414 (STB served July 1, 2020).

⁸ See *Chesapeake & Ind. R.R.—Amended Operation Exemption—Town of North Judson, Ind.*, Docket No. FD 36147 (STB served Oct. 20, 2017); see also *N. Ind. R.R.—Acquisition Exemption—Town of North Judson, Ind.*, Docket No. FD 36499 (STB served Apr. 2, 2021).

⁹ See *Vermilion Valley R.R.—Operation Exemption—FNG Logistics Co.*, Docket No. FD 34340 (STB served May 16, 2003); *Vermilion Valley R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, Docket No. FD 36350 (STB served Oct. 18, 2019).

As the foregoing description of the railroads that are the subject of this Verified Notice demonstrates, none of the lines of the Target Railroads connect with one another or with the lines of GRYR or FG&A. Indeed, except for CKIN and VVRC, which operate non-connecting rail lines in different parts of Indiana, the carriers that are the subject of this Verified Notice operate in entirely different states. Furthermore, the Transaction is not part of a series of anticipated transactions that would connect the Target Railroads with one another, with GRYR or FG&A, or with the lines of any rail carrier owned or controlled by G&A, MIP GP, MIP V, MIP Rail or any of their respective affiliates. Finally, none of the Target Railroads, GRYR, or FG&A is a Class I carrier. Accordingly, this Transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2) and is exempt from prior approval by the Surface Transportation Board.

The name and business address of Applicants are as follows:

Gulf & Atlantic Railways, LLC
245 Riverside Ave, Suite 250
Jacksonville, FL 32202
Attention: Ryan Ratledge
(561) 448-2050

Macquarie Infrastructure Partners V GP, LLC
125 W. 55th Street, 15th Floor
New York, NY 10019
Attention: Henry Blackford
(646) 415-1551

MIP V
c/o Macquarie Infrastructure Partners V GP, LLC
125 W. 55th Street, 15th Floor
New York, NY 10019
Attention: Henry Blackford
(646) 415-1551

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

Applicants' Counsel:

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

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

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

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

Pursuant to the Transaction, G&A will acquire a 100% ownership interest in Camp Chase, CKIN and VVRC. G&A will bring significant financial strength and management expertise to the future operation and business of the Target Railroads. MIP GP and its affiliates are experienced asset managers with a focus on infrastructure in the transportation, communications, utilities, and energy sectors. The Transaction will enhance the Target Railroads' access to capital, facilitating continued investment in their respective rail lines.

The Target Railroads will continue to serve customers located along their respective rail lines and to interchange traffic with the carriers with which they connect. MIP GP's considerable infrastructure investment capabilities, and G&A's rail operating experience, will assist the Target Railroads in maintaining and growing their rail businesses.

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

Camp Chase operates entirely in the State of Ohio. CKIN operates entirely in the State of Indiana. VVRC operates in the States of Illinois and Indiana.

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.*

Color maps depicting the lines of the Target Railroads are attached as Exhibit 1.

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

A copy of the Purchase Agreement is attached as Exhibit 2.¹⁰

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

The Target Railroads all are Class III rail carriers. Therefore, in accordance with 49 U.S.C. § 11326(c), the labor protection provisions of 49 U.S.C. § 11326 do not apply to the present Transaction.

¹⁰ Applicants are filing simultaneously with this Verified Notice a Motion for Protective Order to protect commercially sensitive information in the Purchase Agreement from public disclosure.

1105.6 *Environmental Impacts*

49 C.F.R. § 1105.6(c) provides that no environmental documentation will normally be prepared where a transaction will not result in a “significant change in carrier operations” and does not exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5). The Transaction involves only a change in corporate control of the Target Railroads and will not result in any operational changes.

Specifically, the Transaction will not cause a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of those lines to motor carriage. Nor will the Transaction result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic, or 50 vehicles a day. The Transaction will not exceed the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii), nor will it result in the transportation of any ozone depleting materials. Therefore, pursuant to the Board’s regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

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

1150.8 *Historic Impacts*

Prior Board approval or exemption would be required if, in the future, Applicants proposed to abandon or discontinue rail service over any of the rail lines of the Target Railroads. Applicants have no plans to dispose of or alter any property that is subject to the Board’s jurisdiction and is 50 years old or older. Accordingly,

pursuant to the Board's regulations at 49 C.F.R. § 1105.8(b)(1), this Verified Notice does not require a historic report.

1180.4(g)(4) *Interchange Commitments*

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

* * *

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

Respectfully submitted,

/s/ Terence M. Hynes

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(202) 736-8000

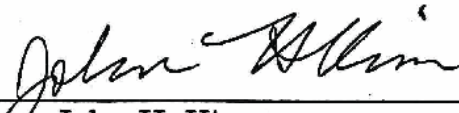
thynes@sidley.com

*Attorneys for Macquarie Infrastructure Partners V GP, LLC, MIP V,
MIP V Rail, LLC, and Gulf & Atlantic Railways, LLC*

Dated March 22, 2023

VERIFICATION

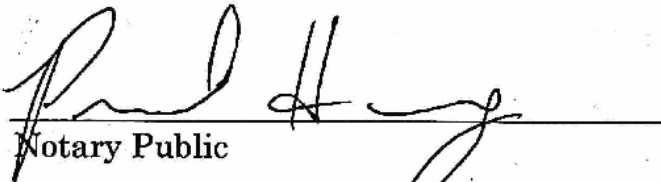
I, John H. Kim, being duly sworn, state that I am the General Counsel and Assistant Secretary of Macquarie Infrastructure Partners V GP, LLC and that I am an officer duly authorized to execute, verify, and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the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



Name: John H. Kim

Title: General Counsel and Assistant Secretary

Subscribed and sworn to before me this 21st day of March, 2023.



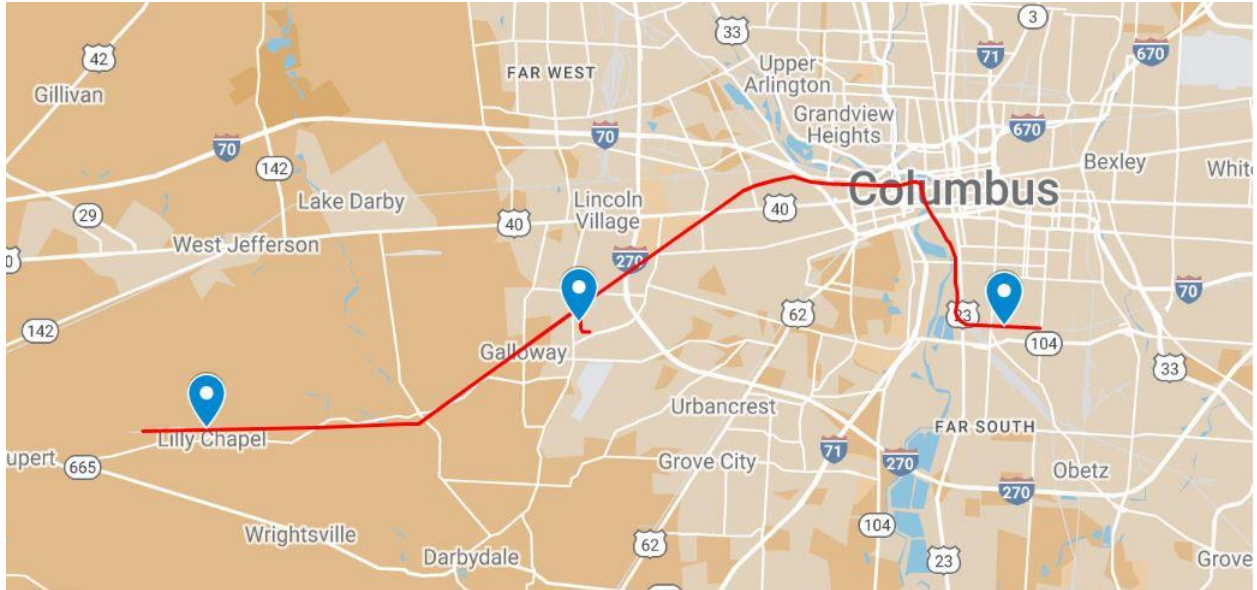
Notary Public

My Commission expires: 11/4/2024

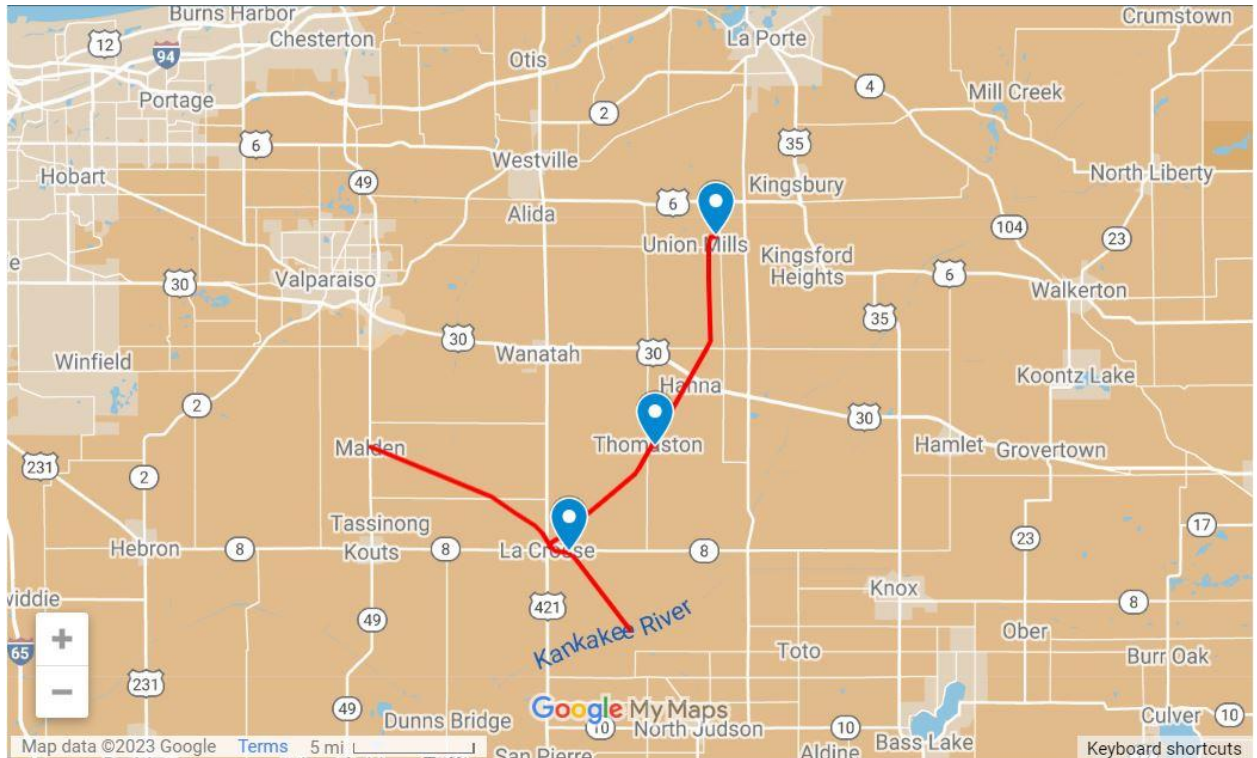


**EXHIBIT 1:
SYSTEM MAPS**

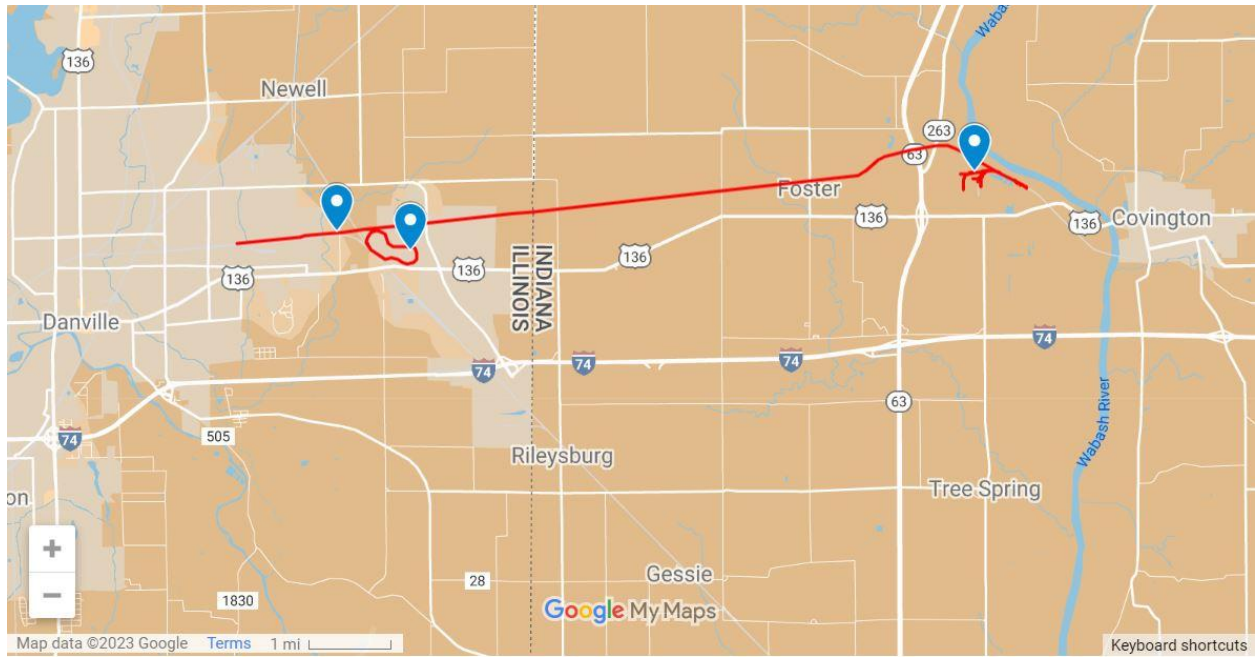
Camp Chase



CKIN



VVRC



**EXHIBIT 2:
PURCHASE AGREEMENT**

PURCHASE AGREEMENT

dated as of

March 17, 2023

among

GULF & ATLANTIC RAILWAYS, LLC,
as Buyer,

MB RAIL IB, LLC,
as Seller

and

THE PERSONS LISTED ON SCHEDULE I HERETO,
as MB Rail Members

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Exhibit C	Form of Escrow Agreement
Exhibit D-1	Form of Certificate of Formation of VVRC LLC
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Exhibit E-1	Form of Certificate of Formation of CKIN LLC
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Exhibit F-1 Form of Certificate of Formation of MB Equipment NewCo
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Exhibit G-1 Form of Asset Assignment Agreement – VVRC LLC and CKIN LLC
Exhibit G-2 Form of Asset Assignment Agreement – MB Equipment NewCo
Exhibit H Form of New CKIN Lease

Applicable Companies Disclosure Letter
Buyer Disclosure Letter

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “**Agreement**”), dated as of March 17, 2023 is entered into by and among (a) Gulf & Atlantic Railways, LLC, a Delaware limited liability company (“**Buyer**”), (b) MB Rail IB, LLC (the “**Seller**”) and (c) solely for purposes of Section 6.11, the members of Seller listed on Schedule I (the “**MB Rail Members**”).

RECITALS

WHEREAS, as of the date hereof, Seller owns 100% of the Equity Interests in each of Vermilion Valley Railroad Company, an Indiana corporation (“**VVRC Inc.**”), MB Rail IB Equipment, LLC, a Kansas limited liability company (“**MB Equipment Seller**”), Camp Chase Rail, LLC, a Kansas limited liability company (“**Camp Chase**”) and Chesapeake and Indiana Railroad Company, Inc., an Indiana corporation (“**CKIN Inc.**”);

WHEREAS, after the consummation of the Pre-Closing Restructuring (as defined below), Seller will own 100% of the Equity Interests in (a) a newly-formed Delaware limited liability company (“**VVRC LLC**”) that owns substantially all of the assets previously owned by VVRC Inc., (b) a newly-formed Delaware limited liability company (“**MB Equipment NewCo**”) that owns certain of the assets previously owned by MB Equipment Seller and (c) a newly-formed Delaware limited liability company (“**CKIN LLC**”) that owns substantially all of the assets previously owned by CKIN Inc.; and

WHEREAS, at Closing Seller desires to sell 100% of the Equity Interests of the Acquired Companies (the “**Purchased Equity Interests**”) to Buyer, upon the terms and subject to the conditions herein.

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

ARTICLE 1
DEFINITIONS

Section 1.01. Glossary of Defined Terms. As used herein, the following terms have the following meanings:

“**Accounting Principles**” means in accordance with GAAP using and applying the same accounting principles, practices, procedures, policies and methods (with consistent classifications, judgments, elections, inclusions, exclusions and valuation and estimation methodologies) Seller used and applied in the preparation of the Financial Statements. For the avoidance of doubt, in the event that the accounting principles, practices, procedures, policies and methods (with consistent classifications, judgments, elections, inclusions, exclusions and valuation and estimation methodologies) Seller used and applied in the preparation of the Financial Statements are

inconsistent with GAAP, GAAP shall prevail in the calculation of the Purchase Price Adjustment Statement.

“Accounts Payable” means all invoices, bills, accounts payable or other trade payables due and owed to any Person by an Applicable Company.

“Accounts Receivable” means all notes receivable, trade accounts receivable and other rights to payment from any Person to the Applicable Companies.

“Acquired Companies” means the entities listed on Schedule II attached hereto.

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

“Adjustment Escrow Amount” means an amount in cash equal to [REDACTED].

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (i) vote 50% or more of the securities having ordinary voting power for the election of directors, managers, governing body, or other Persons performing a similar function of such Person or (ii) direct or cause the direction of the management and policies of such Person, whether by Contract or otherwise; provided, however, that with respect to Buyer, the term “Affiliate” shall only include MIP V Rail (ECI) AIV, L.P., a Delaware limited partnership, and its Subsidiaries.

“Aggregate Purchase Price” means [REDACTED]

“Alternative Transaction” means an offer, proposal or inquiry from any Person (other than Buyer or any of its Representatives acting on Buyer’s behalf) regarding (i) an investment in or a sale of any of the Equity Interests of any Applicable Company, (ii) any merger, reorganization, recapitalization, consolidation, or other business combination or disposition involving any Applicable Company, (iii) any third party financing of any Applicable Company (whether debt or equity), (iv) any sale of all or a portion of the assets of any Applicable Company (other than sales in the ordinary course of business consistent with past practice), or (v) any other transaction that would, or could reasonably be expected to, impair, interfere with, delay or prevent the Transactions.

“Ancillary Agreements” means the Assignment Agreement, the Escrow Agreement and all other agreements, documents, or certificates to be executed and delivered by a party in connection with this Agreement and the Pre-Closing Restructuring.

“Anti-Corruption Laws” means Laws relating to anti-bribery or anti-corruption (governmental or commercial) of any jurisdiction applicable to the parties, including Laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of

anything of value (including gifts or entertainment) to any government official, commercial entity, or any other Person to obtain a business advantage; such as, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, or U.S. domestic anti-corruption Laws.

“Applicable Companies” means (a) prior to the completion of the Pre-Closing Restructuring, Camp Chase and the Predecessor Companies and (b) following completion of the Pre-Closing Restructuring, Camp Chase, CKIN LLC (as successor to CKIN Inc.’s assets), MB Equipment NewCo (as successor to the Equipment NewCo Assets) and VVRC LLC (as successor to VVRC Inc.’s assets).

“Applicable Companies Disclosure Letter” means the disclosure letter, dated as of the date hereof, delivered by Seller to Buyer with respect to the Applicable Companies in connection with the execution and delivery of this Agreement.

“Applicable Companies Fundamental Representations” means the representations and warranties of Seller or the Applicable Companies set forth in Section 4.01(a), Section 4.02, Section 4.03, Section 4.04 and Section 4.20.

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

“Assignment Agreement” means the Assignment Agreement to be entered into as of the Closing Date between Buyer and Seller in the form attached hereto as Exhibit B.

“Base Net Working Capital” means [REDACTED].

“Business” means (a) with respect to Camp Chase, the business engaged in by Camp Chase as of the date of this Agreement and at any time during the 12-month period immediately prior to the date hereof and (b) with respect to each New Company, the business of such New Company’s applicable Predecessor Company as of the date of this Agreement and at any time during the 12-month period immediately prior to the date hereof.

“Business Day” means a day, other than a Saturday, Sunday or other day on which commercial banks in Jacksonville, Florida or New York, New York are authorized or required by Law to close.

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

“Buyer Group” means Buyer, its Subsidiaries, any direct and indirect equityholder of Buyer and any of their respective Affiliates, in each case, without giving effect to the limitations set forth in the proviso in the definition of Affiliate.

“Campaign Finance Law” means any applicable federal, state, or local Laws related to political activity and/or campaign finance in the United States, including, but not limited to, the

Federal Election Campaign Act, the regulations of the Federal Election Commission, pay-to-play Laws, and all state and local Laws related to political activity and/or campaign finance.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) and any administrative or other guidance published with respect thereto by any Governmental Authority, or any other applicable Law or executive order or executive memorandum intended to address the consequences of COVID-19 (in each case, including any comparable provisions of U.S. federal, state, local or non-U.S. Law and including any related or similar orders or declarations from any Governmental Authority), including the Presidential Memorandum on Deferring Payroll Tax Obligations in light of the ongoing COVID-19 Disaster, as issued on August 8, 2020, and including any administrative or other guidance published with respect thereto by any Governmental Authority (including IRS Notice 2020-65).

“Closing Cash” means

[REDACTED]

“Closing Date” means the date of the Closing.

“Closing Indebtedness” means

[REDACTED]

“Closing Net Working Capital” means

[REDACTED]

“Closing Net Working Capital Adjustment” means an amount (which may be positive or negative) equal to (a) Closing Net Working Capital, *minus* (b) Base Net Working Capital.

“Closing Payment” means

[REDACTED]

“Closing Transaction Expenses” means Transaction Expenses calculated as of the Measurement Time.

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

“Confidentiality Agreement” means that certain Confidentiality Agreement, dated August 19, 2022, by and between Buyer and MBR.

“Contracts” means all contracts, leases, deeds, mortgages, easements, licenses, instruments, notices, commitments, undertakings, indentures, notes, bonds, joint ventures and all other agreements, commitments and legally binding agreements, whether written or oral.

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

“Current Assets” means only the current asset accounts of the Acquired Companies reflected in the line items set forth on the sample calculation attached hereto as Exhibit A, calculated as of the Measurement Time in accordance with the Accounting Principles; provided, however, that “Current Assets” shall exclude Closing Cash and any amounts to be paid pursuant to Section 6.14.

“Current Liabilities” means only the current liability accounts of the Acquired Companies reflected in the line items set forth on the sample calculation attached hereto as Exhibit A, calculated as of the Measurement Time in accordance with the Accounting Principles; provided, however, that “Current Liabilities” shall exclude Closing Indebtedness and Closing Transaction Expenses.

“Employees” means employees of the Applicable Companies.

“Environmental Claim” means any Action by any Person alleging Liability (including Liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the actual or alleged presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

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

“Environmental Notice” means any directive, notice of violation or infraction, or other notice respecting any Environmental Claim.

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

“Equity Interests” means issued and outstanding capital stock, partnership interests, limited liability company interests or other indicia of equity ownership (including any profits interest or phantom stock).

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

“Escrow Agent” means Citibank, N.A.

“Escrow Agreement” means the Escrow Agreement to be entered as of the Closing Date among Buyer, Seller and the Escrow Agent, with respect to the Adjustment Escrow Amount in the form attached hereto as Exhibit C.

“Estimated Closing Cash” means Seller’s good faith estimate of Closing Cash.

“Estimated Closing Indebtedness” means Seller’s good faith estimate of Closing Indebtedness.

“Estimated Closing Net Working Capital” means Seller’s good faith estimate of Closing Net Working Capital.

“Estimated Closing Transaction Expenses” means Seller’s good faith estimate of Closing Transaction Expenses.

“Fraud” means



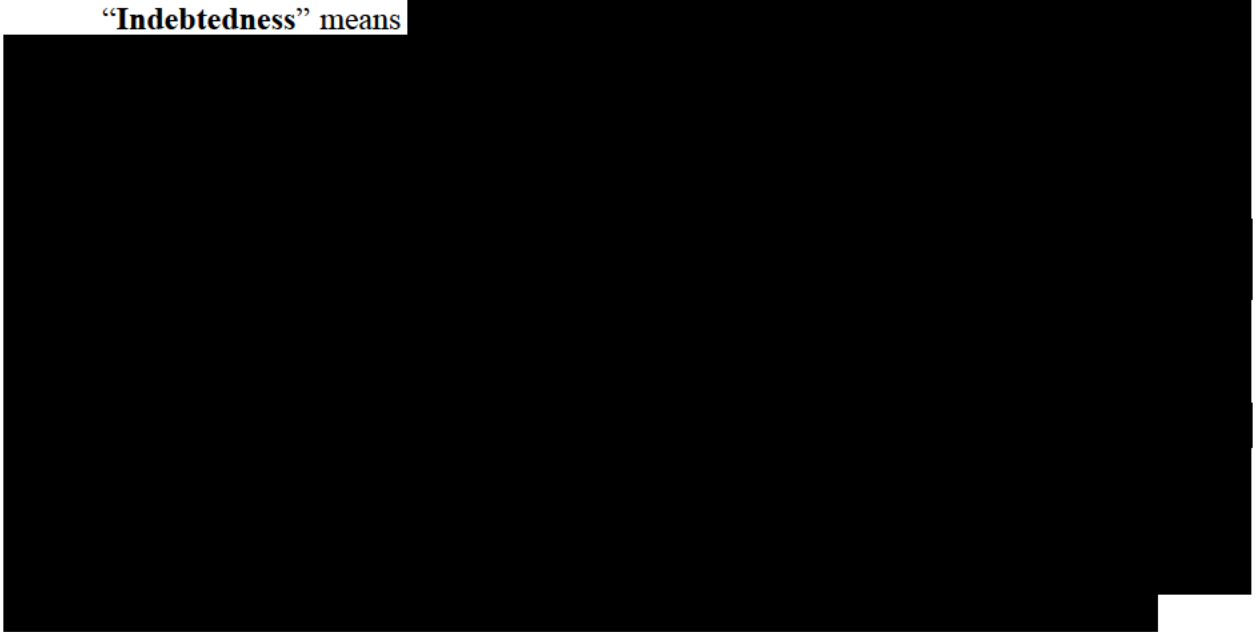
“GAAP” means generally accepted accounting principles in the United States of America.

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

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

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, commodity, derivative, compound, mixture, solution, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, reactive, flammable, radioactive, toxic, or words of similar import or regulatory effect, which is defined under or gives rise to Liability under Environmental Laws, regardless of amount or volume; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, per- and polyfluoroalkyl substances, urea formaldehyde foam insulation and polychlorinated biphenyls, regardless of amount or volume.

“Indebtedness” means



“Intellectual Property” means any and all (i) trademarks and service marks, including all applications and registrations and goodwill related to the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; and (v) internet domain name registrations.

“Knowledge” means (a) with respect Seller, the actual knowledge of the individuals listed opposite Seller’s name on Section 1.01(a) of the Applicable Companies Disclosure Letter, (b) with respect to the Applicable Companies, the actual knowledge of the individuals listed on Section 1.01(b) of the Applicable Companies Disclosure Letter, and (c) with respect to Buyer, the actual knowledge of the individuals listed on Section 1.01(c) of the Buyer Disclosure Letter, in each case, after due inquiry.

“Law” means any applicable transnational, domestic or foreign federal, state or local law (including common law), constitution, treaty, statute, ordinance, code, rule, regulation, judgment, order, writ, decree, ruling, injunction or other similar requirement enacted, adopted, promulgated or applied by any Governmental Authority, in each case, as amended unless expressly specified otherwise.

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

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

“Lobbying Laws” means all applicable federal, state, and local Laws concerning lobbying (including, but not limited to, direct lobbying and grassroots lobbying), including, but not limited

to, the federal Lobbying Disclosure Act, state, and local lobbying Laws, any ethics Laws related to the conduct of lobbying, and all applicable lobbying registration and reporting requirements.

“Losses” means any and all payments, judgments, Liabilities, amounts paid in settlement, charges, assessments, deficiencies, damages, fines, penalties, losses and expenses (including removal costs, remediation costs and interest, court costs, reasonable fees of attorneys, accountants and other experts, and other reasonable expenses of investigation, litigation, or other proceedings or of any Claim, default or assessment).

“Material Adverse Effect” means any fact, circumstance, change, event, occurrence or effect that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (x) the financial condition, business, assets, Liabilities or results of operations of the Applicable Companies, taken as a whole, or (y) the ability of Seller to timely consummate, or would reasonably be expected to prevent, hinder or delay, the Transactions; provided that with respect to foregoing clause (x), none of the following, and no fact, circumstance, change, event, occurrence or effect arising out of, relating to or resulting from the following, shall constitute a “Material Adverse Effect”: (i) any facts, circumstances, changes, events, occurrences or effects generally affecting (A) the industries in which the Applicable Companies operate, or (B) the economy, credit, debt, securities or financial or capital markets in the United States or elsewhere in the world; or (ii) any facts, circumstances, changes, events, occurrences or effects to the extent arising out of, resulting from or attributable to (A) changes or prospective changes in Law, in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, (B) acts of war or any outbreak of hostilities, sabotage or terrorism (including cyber-attacks, computer hacking, international trade related matters and matters related to tariffs), or any escalation or worsening of any such acts of war, outbreak of hostilities, sabotage or terrorism, (C) earthquakes, hurricanes, tornados, natural disasters, climatic conditions or other acts of god, (D) actions or omissions of any Applicable Company requested by Buyer or required by this Agreement or (E) any failure by the Applicable Companies to meet any internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations (it being understood that the underlying cause(s) of any such failure may be taken into consideration unless otherwise prohibited by this definition of “Material Adverse Effect”); provided that any event, occurrence, fact, condition or change referred to in clauses (i), (ii)(A), (ii)(B) and (ii)(C) immediately above only shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Applicable Companies as compared to other participants in the industries in which the Applicable Companies conducts its business.

“Measurement Time” means 12:01 a.m. on the Closing Date.

“New CKIN Lease” means the Railroad Lease and Operating Agreement, in the form attached hereto as Exhibit H.

“New Companies” means, collectively, CKIN LLC, MB Equipment NewCo and VVRC LLC.

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

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

“Owned Interests” means (a) prior to the Pre-Closing Restructuring, the Equity Interests in Camp Chase, LLC and each Predecessor Company held by the Seller and (b) after giving effect to the Pre-Closing Restructuring, the Equity Interests in each Acquired Company held by Seller.

“Payoff Letters” means a customary payoff letter accompanied by any applicable Lien release, wire instructions and other documentation in form and substance reasonably acceptable to Buyer evidencing the full payoff and release of Liens from each holder of Indebtedness listed in Section 6.08 of the Applicable Companies Disclosure Letter.

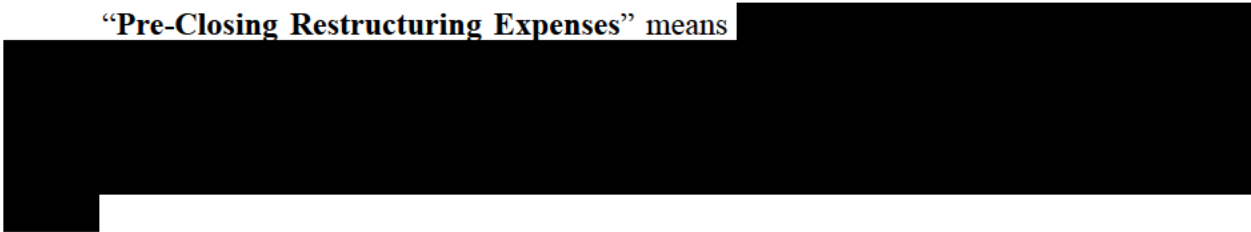
“Permits” means all permits, licenses, franchises, approvals, authorizations, and consents required to be obtained from Governmental Authorities.

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

alleys, highways, railways, pipelines, transmission lines, transportation lines, distribution lines, power lines, telephone lines, removal of timber, grazing, logging operations, canals, ditches, reservoirs, and other like purposes, or for the joint or common use of real estate, rights of way, facilities, and equipment that do not (in each case) materially detract from the value of or materially interfere with the use and operation of any of the assets of any Applicable Company; (j) licenses of Intellectual Property in the Ordinary Course; and (k) Liens securing any Indebtedness of the Applicable Companies that will be released at Closing.

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

“Pre-Closing Restructuring Expenses” means



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

“Pre-Closing Taxes” means any and all Taxes of or with respect to any Applicable Company for or relating to any Pre-Closing Tax Period (determined in accordance with the principles set forth in this definition of “Pre-Closing Taxes” with respect to any Straddle Period), including any Liabilities for amounts that any Applicable Company has deferred pursuant to the CARES Act; provided that Pre-Closing Taxes shall be calculated (i) with respect to any Taxes that are imposed on or with respect to income, gains, receipts, sales or payments (or are otherwise imposed on a transactional basis) of any Applicable Company that are payable for a Straddle Period, based on an interim closing of the books as of the close of business on the Closing Date and (ii) in the case of any other Taxes of any Applicable Company for a Straddle Period, by apportioning such Taxes on a per diem basis in proportion to the number of days in the relevant taxable period prior to and including the Closing Date relative to the full number of days in the relevant taxable period.

“Predecessor Companies” means VVRC Inc., MB Equipment Seller and CKIN Inc.

“Real Property” means the real property owned, leased or subleased by the Applicable Companies, together with all buildings, structures and facilities located thereon, other than the Rail Facilities.

“Related Party” means any Seller, any Affiliate of any Seller or any officer, director, manager, equityholder or employee of any Seller or Applicable Company, or any of the foregoing Persons’ immediate family members, Affiliates or associates.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing

or allowing to escape or migrate into or through the indoor or outdoor environment (including ambient air (indoor or outdoor), soil, soil vapor, surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, such Person’s directors, managers, officers, direct or indirect equityholders, members, partners, existing and prospective investors, employees, counsel, financial advisors, auditors, insurers, lenders, agents and other authorized representatives.

“Seller Fundamental Representations” means the representations and warranties of Seller set forth in Section 3.01, Section 3.02, Section 3.03, Section 3.05 and Section 3.07.

“STB” means the United States Surface Transportation Board.

“STB Approval” means any required approval, authorization or exemption of the transactions contemplated by this Agreement pursuant to 49 U.S.C. § 11323 *et seq.* and the STB’s regulations at 49 C.F.R. § 1180.

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

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

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

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

“Taxing Authority” means any Governmental Authority responsible for the imposition or collection of any Tax.

“Transaction Agreements” means, collectively, this Agreement and the Ancillary Agreements.

“Transaction Expenses” means (i) all out-of-pocket fees and expenses incurred or otherwise payable or reimbursable by any Applicable Company in connection with the Transactions, including those payable to investment bankers, legal counsel, accountants and other advisors and (ii) all retention, change of control, transaction-related or similar payments or bonuses

(but, for the avoidance of doubt, not regular, annual performance bonuses) payable to Employees or any other current or former service provider arising out of or relating to the consummation of the Transactions (and including, for the avoidance of doubt, all installment payments of the foregoing, the employer portion of any payroll or employment Taxes associated with such payments and any matching, employer non-elective or other company contributions payable to any Acquired Company Benefit Plan intended to provide retirement benefits associated with such payments). Transaction Expenses shall not include (w) any Transaction Expenses paid prior to the Closing (but, for the avoidance of doubt, shall include Transaction Expenses paid at Closing), (x) any Liabilities included in Closing Net Working Capital, (y) any Indebtedness or (z) any Pre-Closing Restructuring Expenses.

“Transactions” means the Pre-Closing Restructuring, purchase and sale of the Purchased Equity Interests and the other transactions contemplated by the Transaction Agreements, including the performance by the parties of their respective covenants and obligations under the Transaction Agreements.

“U.S.” means the United States of America.

Section 1.02. Other Defined Terms. Each of the following terms is defined in the Section set forth opposite such term: Access Rights 2.04(b)

Accounting Arbitrator	2.04(d)
Acquired Companies Systems	4.11(d)
Acquired Company Benefit Plans	4.17(a)
Acquired Company ERISA Affiliate	4.17(a)
Agreement	Preamble
Applicable Companies Intellectual Property	4.11(a)
Buyer	Preamble
Camp Chase	Recitals
CKIN Inc.	Recitals
CKIN LLC	Recitals
Claims	6.12(a)
Closing	2.02
Closing Statement	2.03(b)
Company Released Parties	6.12(a)
Company Releasing Parties	6.12(b)
Data Room	1.03
End Date	9.01(d)
Enforceability Exceptions	3.02(a)
Equipment NewCo Assets	6.13(e)
Erroneus Payee	6.14
Erroneus Payment	6.14
Erroneus Payor	6.14
Estimated Aggregate Purchase Price	2.03(b)
Final Aggregate Purchase Price	2.04(d)
Final Purchase Price Adjustment Statement	2.04(d)
Financial Statements	4.06(a)
Insurance Policies	4.12(a)

IP Licenses	4.11(c)
Leases.....	4.09(c)
Material Contracts.....	4.08(a)
Material Customer	4.22(a)
Material Vendor.....	4.22(b)
MB Equipment NewCo.....	Recitals
MB Equipment Seller	Recitals
MB Rail Members.....	Preamble
New Plans	6.07(b)
Non-Party Affiliates.....	10.14
Objection Dispute	2.04(c)
Pre-Closing Restructuring.....	6.13
Purchase Price Adjustment Statement	2.04(a)
Purchased Equity Interests.....	Recitals
Rail Facilities	4.10(a)
Railroad Assets	4.10(b)
Related Party Agreement	4.21
Releasing Parties	6.12(b)
Resolution Period.....	2.04(d)
Restricted Parties	6.11(a)
Restricted Period.....	6.11(a)
Seller Released Parties.....	6.12(b)
Seller Releasing Parties.....	6.12(a)
Seller	Preamble
Transfer Taxes	6.06(a)
VVRC Inc.	Recitals
VVRC LLC.....	Recitals

Section 1.03. Other Definitional and Interpretative Provisions. The words “hereof”, “herein” and “hereunder” and words of similar import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. The headings in this Agreement are for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein, including the Applicable Companies Disclosure Letter and the Buyer Disclosure Letter, are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any term used in this Agreement or any Exhibit or Schedule hereto, but not otherwise defined or specified herein, shall have the meaning attributed to such term in the railroad industry or the industries in which other Applicable Companies operate (as applicable), in each case as of 2023. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including”

are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. The word “or” shall be deemed to mean “and/or” (whether or not specified), and the words “will” and “will not” are expressions of command and not merely expressions of future intent or expectation. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References in the singular or to “him,” “her,” “it,” “itself,” or other like references, and references in the plural or the feminine or masculine reference, as the case may be, shall also, when the context so requires, be deemed to include the plural or singular, or the masculine or feminine reference, as the case may be. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to any time shall mean Central Time unless otherwise specified. Any action required to be taken “within” (or any other word or phrase of similar import) a specified time period following the occurrence of an event shall be required to be taken by no later than 11:59 P.M. on the last day of such time period, which shall be calculated starting with the day immediately following the date of the event. All monetary figures shall be in U.S. dollars unless otherwise specified. When calculating the period of time before which, within which or following which any act is to be done or step is to be taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day. Whenever the phrase “made available,” “delivered” or words of similar import are used in reference to a document, it shall mean the document was delivered to Buyer or its Representatives [REDACTED], or was otherwise made available for viewing by Buyer or its Representatives [REDACTED].

[REDACTED]. The parties have participated jointly in the negotiation and drafting of this Agreement and each has been represented by counsel of its choosing and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2

PURCHASE AND SALE

Section 2.01. Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller agrees to sell, transfer and assign to Buyer, and Buyer agrees to purchase from Seller, all of Seller’s Purchased Equity Interests.

Section 2.02. Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place remotely via the electronic exchange of documents and signature pages on the date that is the [REDACTED]

following the day on which the last of the conditions to the obligations of the parties hereto set forth in Article 7 or otherwise in this Agreement (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) shall have been satisfied or waived in writing by the party or parties entitled to the benefit of the same in accordance with this Agreement, or at such other date, time and place as Buyer and Seller shall otherwise mutually agree.

At the Closing:

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

(i) to Seller, an amount equal to in immediately available funds by wire transfer to the account designated by Seller in accordance with Section 2.03;

(ii) upon execution and delivery of the Escrow Agreement by Seller, Buyer and the Escrow Agent, to the Escrow Agent, the Adjustment Escrow Amount by wire transfer of immediately available funds in accordance with the Escrow Agreement;

(iii) with respect to each Payoff Letter required to be delivered pursuant to Section 6.08, an amount equal to the amount required to be paid pursuant to such Payoff Letter by wire transfer of immediately available funds to the payees and to the accounts set forth in such Payoff Letter;

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

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

(vi) a duly executed certificate pursuant to Section 7.03(c) hereof;

(vii) a copy of resolutions or a written consent authorizing and approving the execution and delivery of the Transaction Agreements, and the consummation of the transactions contemplated thereby, by Buyer and the governing body of Buyer; and

a certificate of good standing, or the equivalent, with respect to Buyer issued by the Secretary of State of the applicable jurisdiction dated within 10 days of the Closing Date.

(b) Seller shall (or shall cause the applicable Seller or Acquired Company to) deliver to Buyer:

(i) the Assignment Agreement, duly executed by Seller and attaching thereto certificates for the Purchased Equity Interests (if any);

(ii) the Escrow Agreement, duly executed by Seller;

(iii) the New CKIN Lease, duly executed by the parties thereto;

- (iv) duly executed certificates pursuant to Section 7.02(i) hereof;
 - (v) a copy of resolutions or a written consent authorizing and approving the execution and delivery of the Transaction Agreements, and the consummation of the transactions contemplated thereby, by Seller and the governing body or Person of Seller;
 - (vi) a certificate of good standing, or the equivalent, with respect to the Acquired Companies, issued by the Secretary of State of the applicable jurisdiction, dated within 10 days of the Closing Date; and
 - (vii) a duly executed letter of resignation or other evidence of removal from office, effective as of the Closing, of any director or officer of an Acquired Company if requested by Buyer in writing no later than five Business Days prior to the Closing Date;
 - (viii) a properly executed IRS Form W-9 from Seller; and
 - (ix) (A) in the case of Closing Transaction Expenses that consist of payments to Employees, pay through a special payroll or regularly scheduled payroll to each such Employee in accordance with the terms of the applicable arrangement with such Employee and (B) with respect to all other Closing Transaction Expenses, to pay at or shortly after the Closing to the payees of such other Closing Transaction Expenses the amounts, and to the accounts, set forth in the Closing Statement.
- (c) Notwithstanding anything contained in this Agreement to the contrary, to the extent any payment is to be made to Seller in accordance with the wire transfer instructions provided by Seller to Buyer, then none of Buyer, the Acquired Companies, their Affiliates or any member of the Buyer Group shall have any further responsibility or Liability with respect thereto and such parties shall be entitled to rely conclusively and without independent verification.

Section 2.03. Estimated Purchase Price Adjustment.

- (a) Within [REDACTED] Seller shall provide Buyer with a letter executed by Seller that provides the wire instructions for the account that Seller will designate for payment of the amount pursuant to Section 2.02(a)(i) and shall designate a responsible individual of Seller with familiarity with such account and provide such individual's contact information, including phone number to the extent available at such time.
- (b) No earlier than [REDACTED] and no later than [REDACTED], Seller shall deliver to Buyer a statement (the "**Closing Statement**") setting forth (i) Estimated Closing Cash, (ii) Estimated Closing Indebtedness, (iii) Estimated Closing Net Working Capital, and (iv) Estimated Closing Transaction Expenses, in each case, calculated in accordance with the applicable definitions thereof, together with such schedules and data with respect to the determination thereof as may be appropriate to support the calculations set forth in the Closing Statement, and using the amounts set forth in clauses (i) through (iv), Seller's calculations of the Closing Net Working Capital Adjustment and each other element of the Aggregate Purchase Price (such calculation, the "**Estimated Aggregate Purchase Price**"). Seller shall consider in good faith any comments from Buyer with respect to the Estimated Aggregate Purchase Price delivered no later than one Business Day prior to the Closing Date.

Section 2.04. Post-Closing Purchase Price Adjustment.

(a) As promptly as practicable, but no later than [REDACTED] Buyer will cause to be prepared and delivered to Seller a statement (the “**Purchase Price Adjustment Statement**”) setting forth (i) Buyer’s good faith calculations of (A) Closing Cash, (B) Closing Indebtedness, (C) Closing Net Working Capital and (D) Closing Transaction Expenses, together with such schedules and data with respect to the determination thereof as may be appropriate to support the calculations set forth in the Purchase Price Adjustment Statement, and (ii) using the amounts set forth in the preceding clause (i), Buyer’s calculations of the Closing Net Working Capital Adjustment and the Aggregate Purchase Price. If Buyer fails to deliver the Purchase Price Adjustment Statement within [REDACTED], the Closing Statement shall be final and binding upon all of the parties to this Agreement, and the Estimated Aggregate Purchase Price shall be the Final Aggregate Purchase Price.

(b) Following the delivery of the Purchase Price Adjustment Statement, Buyer shall provide Seller and its Representatives with reasonable access to the books and records, work papers and other documents that were used in the preparation of, or otherwise relate to, the Purchase Price Adjustment Statement (collectively, “**Access Rights**”) to verify the accuracy of such amounts, all to the extent reasonably requested by Seller. The Accounting Arbitrator shall have the power to resolve any disputes regarding Access Rights.

(c) If Seller disagrees with the calculation of any of the items set forth in the Purchase Price Adjustment Statement, Seller shall notify Buyer in writing of such disagreement (an “**Objection Dispute**”) within [REDACTED]. Any Objection Dispute shall specify in reasonable detail the nature and amount of any disagreement so asserted. If Seller fails to deliver written notice of an Objection Dispute to Buyer within [REDACTED], the Purchase Price Adjustment Statement shall be deemed final and binding upon all of the parties to this Agreement.

(d) If Seller delivers a notice of an Objection Dispute pursuant to Section 2.04(c), Buyer and Seller shall negotiate in good faith to resolve any Objection Dispute and any resolution agreed to in writing by Buyer and Seller shall be final and binding upon the parties to this Agreement. If Buyer and Seller are unable to resolve all Objection Disputes within [REDACTED] (the “**Resolution Period**”), then the disputed matters shall, at the request of either Seller or Buyer, be referred for final determination to Ernst & Young or another nationally recognized accounting firm mutually acceptable to Seller and Buyer (the “**Accounting Arbitrator**”) within [REDACTED]. Any communications between Seller and Buyer (or their respective Representatives) regarding the Objection Dispute during the aforementioned [REDACTED] shall be considered settlement discussions pursuant to Federal Rule of Evidence 408 and similar state rules and shall not be submitted to, or considered by, the Accounting Arbitrator. If such firm is unable to serve, within [REDACTED], Buyer and Seller shall jointly select an Accounting Arbitrator from an accounting firm of national standing; provided that the Accounting Arbitrator shall not have provided any audit, consulting, or other services to Buyer, Seller, or any of their respective Affiliates in the past two years. The Accounting Arbitrator shall only consider those items and amounts set forth on the Purchase Price Adjustment Statement as to

which Buyer and Seller have disagreed within the time periods and amounts and on the terms specified in Section 2.04(c) and this Section 2.04(d), including the Accounting Principles, and must resolve all unresolved Objection Disputes in accordance with the terms and provisions of this Agreement and the written presentations of Buyer and Seller (and not based on any independent review). The Accounting Arbitrator shall deliver to Buyer and Seller, as promptly as practicable and in any event [REDACTED], a written report setting forth the resolution of any unresolved Objection Disputes determined in accordance with the terms herein, which shall include a statement of the reasons supporting such resolution. In resolving any disputed item, the Accounting Arbitrator shall be bound by the principles set forth in this Section 2.04 and shall not assign a value to any item greater than the greatest value for such item claimed by either Buyer in the Purchase Price Adjustment Statement or Seller in the Objection Dispute or less than the lowest value for such item claimed by either Buyer in the Purchase Price Adjustment Statement or Seller in the Objection Dispute. Such report shall be final and binding upon all of the parties to this Agreement, absent arithmetic error by the Accounting Arbitrator or actual fraud. Upon the agreement of Buyer and Seller, or upon the decision of the Accounting Arbitrator, or if Seller fails to deliver written notice of disagreement to Buyer within [REDACTED] [REDACTED] the Purchase Price Adjustment Statement, as adjusted (if necessary) pursuant to the terms of this Agreement, shall be deemed to be the final Purchase Price Adjustment Statement for purposes of this Section 2.04 (the “**Final Purchase Price Adjustment Statement**”) and shall be deemed to be final and binding upon all of the parties to this Agreement. The Aggregate Purchase Price shown on the Final Purchase Price Adjustment Statement shall be referred to as the “**Final Aggregate Purchase Price**”. The fees, expenses and costs of the Accounting Arbitrator shall be borne by Buyer and Seller, respectively, in the proportion that the aggregate dollar amount of the disputed items submitted to the Accounting Arbitrator by such party that are unsuccessfully disputed by such party (as finally determined by the Accounting Arbitrator) bears to the aggregate dollar amount of all disputed items submitted by Buyer and Seller; provided that Buyer and Seller shall each be responsible for 50% of any retainer or other upfront fees and costs of the Accounting Arbitrator, subject to re-allocation pursuant to the preceding clause. The parties agree that the Accounting Arbitrator’s decision may be enforced as an arbitration award in any court of competent jurisdiction. The process set forth in this Section 2.04 shall be the exclusive remedy of Seller and Buyer for any disputes related to any amounts set forth on the Purchase Price Adjustment Statement.

Section 2.05. Purchase Price Adjustment.

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

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

account designated by Seller in writing. If the excess of the Estimated Aggregate Purchase Price over the Final Aggregate Purchase Price exceeds the Adjustment Escrow Amount, Seller shall pay Buyer an amount equal to (x) the excess of the Estimated Aggregate Purchase Price over the Final Aggregate Purchase Price minus (y) the Adjustment Escrow Amount by wire transfer of immediately available funds to the account designated by Buyer in writing.

(c) If the Final Aggregate Purchase Price is greater than the Estimated Aggregate Purchase Price, then (i) Buyer and Seller shall direct the Escrow Agent to pay to Seller an amount equal to the Adjustment Escrow Amount, by wire transfer of immediately available funds to an account or accounts designated by Seller in writing and (ii) Buyer shall pay, or caused to be paid, to Seller an amount equal to the excess of the Final Aggregate Purchase Price over the Estimated Aggregate Purchase Price by wire transfer of immediately available funds to the account designated by Seller in writing.

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

(e) Any payment pursuant to this Section 2.05 shall be made within [REDACTED], by wire transfer of immediately available funds and delivered to such bank account as shall be designated in writing by the party to which such payment is to be made. Seller, Buyer, the Acquired Companies and their respective Affiliates shall treat any payment pursuant to this Section 2.05 as an adjustment to the purchase price for Tax purposes.

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

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

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

Section 3.01. Corporate Existence and Power. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Seller has the requisite power and authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as now being conducted. Seller is duly qualified or licensed to do business as a foreign limited liability company and is or will be in good

standing in each jurisdiction where the character of the assets and properties owned, leased, or operated by it or the nature of its business makes such qualification or license necessary, except where the failure to be so qualified or licensed or to be in good standing, would not reasonably be expected to have a Material Adverse Effect.

Section 3.02. Authority; Capacity.

(a) The execution, delivery and performance by Seller of each Transaction Agreement to which it is or will be a party, and the consummation of the Transactions by Seller, are within its legal right, power, authority and capacity, and have been duly authorized by all necessary action on the part of Seller. This Agreement has been, and each Ancillary Agreement to which Seller is a party has been or will be, duly and validly executed and delivered by Seller, and, assuming the due and valid execution by the other parties hereto and thereto, each Transaction Agreement to which Seller is a party constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally and general principles of equity (collectively, the “**Enforceability Exceptions**”).

(b) The execution, delivery and performance by Seller of each Transaction Agreement to which Seller is a party, and the consummation by Seller of the Transactions (taking into account the transactions contemplated by the Payoff Letters), will not (a) violate, constitute a default under or give any Person the right to modify, terminate, or accelerate any obligation under any provision of the Organizational Documents of any Applicable Company, (b) result in the creation of any Lien upon the Purchased Equity Interests, or (c) assuming that the consents, approvals and filings referred to in Section 3.03 are duly obtained or made, (i) violate any Law applicable to any Applicable Company or any of such Applicable Company's respective properties or assets, or (ii) violate, conflict with, result in a breach of any provision of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of such Applicable Company under, any of the terms, conditions or provisions of any Contract or other instrument or obligation to which such Applicable Company is a party, or by which it or any of its properties or assets may be bound or affected.

Section 3.03. Consents and Approvals. No consent, approval, clearance, waiver, Permit or Governmental Order of or from, or filings or registrations with, or notice to, any Governmental Authority or with any third Person are necessary in connection with the execution and delivery by Seller of each Transaction Agreement to which Seller is a party or the consummation by Seller of the Transactions and thereby, except for (a) the STB Approval and (b) as otherwise set forth in Section 3.03 of the Applicable Companies Disclosure Letter.

Section 3.04. Noncontravention. The execution, delivery and performance by Seller of each Transaction Agreement to which Seller is a party, and the consummation by Seller of the Transactions (taking into account the transactions contemplated by the Payoff Letters), will not (a) violate any provision of the Organizational Documents of Seller, or (b) assuming that the consents, approvals and filings referred to in Section 3.03 are duly obtained or made, (i) violate any Law applicable to Seller or any of its properties or assets, or (ii) violate, conflict with, result

in a breach of any provision of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Seller under, any of the terms, conditions or provisions of any Contract or other instrument or obligation to which Seller is a party, or by which it or any of its properties or assets may be bound or affected.

Section 3.05. Ownership of Purchased Equity Interests. As of the date hereof, except for Liens that will be released in full at Closing, Seller owns, and has good and valid title to, all of Seller's Owned Interests free and clear of any Liens and, as of Closing, Seller will own, and have good and valid title to, all of Seller's Owned Interest free and clear of any Liens. All of Seller's Owned Interests are duly authorized and validly issued, fully paid, nonassessable and free of preemptive or similar rights, and were issued in compliance with all applicable securities Laws. Seller will transfer and deliver to Buyer at the Closing valid title to Seller's Owned Interests free and clear of any Lien, other than restrictions on transfer that may be imposed by generally applicable securities Laws. Following the Pre-Closing Restructuring, the Owned Interests of Seller constitute all of the Purchased Equity Interests, and such Purchased Equity Interests constitute all of the issued and outstanding Equity Interests of the Acquired Companies.

Section 3.06. Litigation. There are no Actions pending or, to any Seller's Knowledge, threatened against or by Seller or any of its Affiliates that challenge or seek to prevent, enjoin or otherwise delay the consummation of the Transactions or would restrict or limit the ability of Seller to perform fully Seller's obligations under any Transaction Agreement.

Section 3.07. Brokers. No Seller or any of its respective Representatives has employed any broker or finder or incurred any Liability for any broker's fees, commissions, finder's fees or similar compensation in connection with any of the Transactions.

Section 3.08. Anti-Corruption.

(a) Seller and its respective directors, officers, and, to the Knowledge of Seller, employees and agents, are and have been [REDACTED] in compliance with Anti-Corruption Laws.

(b) Since [REDACTED], no Seller nor, if an entity, its respective directors, officers, nor, to the Knowledge of Seller, employees and agents, has offered, promised, provided, or authorized the provision of any money, property, or other thing of value, directly or indirectly, to any Person to improperly influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of their employer, or otherwise violated any Anti-Corruption Laws.

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

(d) No part of the proceeds to be paid to Seller by Buyer in connection with the Transactions will be used, directly or indirectly, in violation of Anti-Corruption Laws and no Seller or its Affiliates will directly or indirectly give, lend, contribute or otherwise make available all or part of such proceeds to any officer or employee of an applicable entity or body exercising executive, legislative, judicial, regulatory or administrative functions of any U.S. federal, state or local government or any foreign, international, multinational or other government, including any department, commission, board, agency, bureau, official or other regulatory, administrative or judicial authority thereof, or other government-owned or controlled entity in violation of Anti-Corruption Laws.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES REGARDING THE APPLICABLE COMPANIES

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

Section 4.01. Corporate Existence and Power.

(a) Camp Chase is a limited liability company duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization, and has the requisite limited liability company power and authority to own, lease, and operate its respective assets and to carry on its Business, and each Predecessor Company is a corporation duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization and has the requisite corporate power and authority to own, lease, and operate its respective assets and to carry on its Business. After giving effect to the Pre-Closing Restructuring, each of the New Companies will be a limited liability company duly organized, validly existing, and in good standing under the Laws of its jurisdiction of formation, and will have the requisite limited liability company power and authority to own, lease, and operate its assets and to carry on its Business. Camp Chase and each of the Predecessor Companies and, after giving effect to the Pre-Closing Restructuring, each of the New Companies is or will be duly qualified or licensed to do business as a foreign corporation, limited liability company, or other legal entity and is or will be in good standing in each jurisdiction where the character of the assets and properties owned, leased, or operated by it or the nature of its Business makes such qualification or license necessary, except where the failure to be so qualified or licensed or to be in good standing, would not reasonably be expected to have a Material Adverse Effect. Each jurisdiction in which each Applicable Company is or, following the Pre-Closing Restructuring, will be qualified to do business is set forth on Section 4.01(a) of the Applicable Companies Disclosure Letter.

(b) Schedule II sets forth the name and jurisdiction of organization for the Applicable Companies both as of the date hereof and following the Pre-Closing Restructuring. Except as set forth in Section 4.01(b) of the Applicable Companies Disclosure Letter, none of the Applicable Companies has agreed, is obligated to make or is bound by any agreement or Contract to make any future investment in or capital contribution to any other Person. Except as set forth on Schedule II, none of the Applicable Companies have operated under any other legal name or used any fictitious or trade name. Section 4.01(b) of the Applicable Companies Disclosure Letter sets forth the officers, directors, and managers, as applicable, of each Applicable Company.

(c) Copies of the Organizational Documents of Camp Chase and each Predecessor Company have been made available to Buyer as of the date hereof and copies of each New Company's Organizational Documents will have been made available to Buyer prior to Closing. Each Organizational Document of Camp Chase and each Predecessor Company is in full force and effect and each Organizational Document of each New Company is in full force and effect as of Closing. None of the Applicable Companies is in violation of any of the provisions of its Organizational Documents.

(d) The minute books (if any) of each Applicable Company, which have been made available to Buyer, contain true, complete and correct records of all meetings and other material corporate actions held or taken since [REDACTED] through the date hereof, by the respective shareholders, stockholders, members, partners or other equityholders and the boards of directors or other governing bodies (including committees of their respective boards of directors or other governing bodies) of the Applicable Company.

Section 4.02. Capitalization.

(a) Section 4.02 of the Applicable Companies Disclosure Letter lists the number of authorized and outstanding Equity Interests and record and beneficial owners of such Equity Interests for each Applicable Company as of the date hereof and as of Closing. Except as set forth in Section 4.02 of the Applicable Companies Disclosure Letter, Seller owns, directly or indirectly, and has good and valid title to, all of the issued and outstanding Equity Interests in each of its respective Subsidiaries, free and clear of any Liens, and all of such Equity Interests are duly authorized and validly issued, fully paid, nonassessable (with respect to each Subsidiary that is a corporation) and free of preemptive or similar rights, and were issued in compliance with all applicable securities Laws. No Applicable Company has, or has ever had, any Subsidiaries other than those Subsidiaries set forth in Section 4.02 of the Applicable Companies Disclosure Letter.

(b) Except as set forth on Section 4.02 of the Applicable Companies Disclosure Letter, no Applicable Company has or is bound by any outstanding subscriptions, options, warrants, convertible or exchangeable securities, subscriptions, calls, commitments, contingent interests, equity appreciation rights, phantom stock, profits participation or agreements of any character calling for the purchase, repurchase, sale, redemption, transfer, conversion, or issuance of any Equity Interest of any Applicable Company or any Equity Interests representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of any such Applicable Company. There are no voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any shares of any Applicable Company.

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

voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any Equity Interests of any Applicable Company.

Section 4.03. Authority.

(a) The execution, delivery and performance by each Applicable Company of each Transaction Agreement to which any Applicable Company is a party, and the consummation of the Transactions by such Applicable Company, are within such Applicable Company's legal right, power, authority and capacity, and have been duly authorized by all necessary corporate action on the part of such Applicable Company. This Agreement has been, and each Ancillary Agreement to which each Applicable Company is a party has been or will be, duly and validly executed and delivered by such Applicable Company, and, assuming due and valid execution by each other party hereto, each Transaction Agreement to which such Applicable Company is a party constitutes a valid and binding agreement of such Applicable Company, enforceable against such Applicable Company in accordance with its terms (subject to the Enforceability Exceptions).

(b) The execution, delivery and performance by each Applicable Company of each Transaction Agreement to which such Applicable Company is a party will not, nor will the consummation by such Applicable Company of the Transactions and thereby, violate, constitute a default under, result in the creation of any Lien upon the Purchased Equity Interests pursuant to, give any Person the right to modify, terminate, or accelerate any obligation under any provision of the Organizational Documents of any Applicable Company.

Section 4.04. Consents and Approvals. No consent, approval, clearance, waiver, Permit or Governmental Order of or from, or filings or registrations with, or notice to, any Governmental Authority are necessary in connection with the execution and delivery by each Applicable Company of any Transaction Agreement to which such Applicable Company is a party or the consummation by such Applicable Company of the Transactions and thereby, except for (a) the STB Approval, and (b) as otherwise set forth in Section 4.04 of the Applicable Companies Disclosure Letter.

Section 4.05. Noncontravention. The execution, delivery and performance by each Applicable Company of each Transaction Agreement to which such Applicable Company is or will be a party and the consummation of the Transactions by such Applicable Company do not and will not, assuming that the consents, approvals and filings referred to in Section 4.04 are duly obtained or made, and except as set forth in Section 4.05 of the Applicable Companies Disclosure Letter, (a) violate any Law applicable to any Applicable Company, (b) require any consent of any Person under, conflict with or constitute a breach or default under (whether with or without the passage of time, the giving of notice or both), or give rise to any right of termination, cancellation or loss of any right or benefit, or acceleration of any obligation of any Applicable Company under, any provision of any Contract or (c) result in the creation or imposition of any Lien on any asset of any Applicable Company, except for any Permitted Liens.

Section 4.06. Financial Statements.

(a) Seller has delivered to Buyer a copy of (i) the unaudited balance sheets of each Applicable Company as of [REDACTED],

together with the unaudited statements of operations, cash flows and changes in shareholder's or member's equity, as applicable, of each Applicable Company for [REDACTED] and the related notes thereto (the "**Financial Statements**"). The Financial Statements, together with the notes thereto, (i) have been prepared in accordance with GAAP [REDACTED]

[REDACTED] applied on a consistent basis throughout the period covered thereby, (ii) have been prepared from, and are in accordance with, the books and records of each Applicable Company, which, in each case, are correct and complete in all material respects and (iii) fairly present, in all material respects, the financial position of the Applicable Companies, at the dates thereof and the results of the income and cash flows of the Applicable Companies, for the respective periods indicated.

(b) Except as set forth in Section 4.06(b) of the Applicable Companies Disclosure Letter, the Applicable Companies have no Liabilities or commitments of a nature, whether or not required to be disclosed in a balance sheet prepared in accordance with GAAP in all material respects, except (i) Liabilities which are adequately and properly reflected or reserved against in the Financial Statements, (ii) unpaid Transaction Expenses, and (iii) Liabilities incurred in the Ordinary Course since [REDACTED] (none of which is a Liability resulting from breach of Contract, breach of warranty, tort, infringement, misappropriation, lawsuit or violation of Law and none of which is material, either individually or in the aggregate), and (iv) leases and accrued payroll and annual employee bonuses.

(c) Except as set forth in Section 4.06(c) of the Applicable Companies Disclosure Letter, all of the Applicable Companies' Accounts Receivable resulted from bona fide transactions in the Ordinary Course with unrelated third parties, and the Applicable Companies have no Knowledge of any reason for such Accounts Receivable, net of any reserves established in accordance with GAAP consistently applied in all material respects, to be uncollectible in the Ordinary Course.

Section 4.07. Absence of Certain Changes.

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

(b) Since [REDACTED], the Businesses of the Applicable Companies have been conducted in the Ordinary Course, and no Seller has taken any action that, if taken during the period from the date of this Agreement through the Closing Date without Buyer's consent, would have constituted a breach of Section 6.01.

Section 4.08. Material Contracts.

(a) Section 4.08(a) of the Applicable Companies Disclosure Letter lists each of the following Contracts and other agreements of the Applicable Companies or that will be Contracts or agreements of an Applicable Company after giving effect to the Pre-Closing Restructuring (together with all Leases listed in Section 4.09(b) of the Applicable Companies Disclosure Letter, collectively, the "**Material Contracts**"):

- (i) Contracts for the purchase, sale or leasing of Real Property on which any Applicable Company conducts its Business or operations;
- (ii) any Contract with any Material Customer;
- (iii) any Contract with any Material Vendor;
- (iv) each Contract of any Applicable Company not contemplated in the foregoing clauses (ii) and (iii) involving aggregate annual consideration in excess of [REDACTED] and ongoing obligations of the Applicable Company beyond [REDACTED];
- (v) Contracts that (A) require any Applicable Company to deal exclusively with the counterparty thereto with respect to marketing, sales, operations, franchising, or distribution or (B) restrict or prohibit any Applicable Company from engaging in activities competitive with any Person, soliciting suppliers, customers or employees anywhere in the world, or participating in joint rail traffic movements with any third-party railroad or railroad operator at any location;
- (vi) all Contracts that relate to the sale of any of any Applicable Company's assets, other than (A) Contracts relating to the sale of assets that are obsolete or not used in the conduct of the Applicable Company's Business, or (B) Contracts that resulted or will result in payment to the Applicable Company of less than [REDACTED] in each case, that have any ongoing or continuing obligations;
- (vii) any Contract for the sale, transfer, purchase, acquisition or other disposition of any material assets or Equity Interests or for any right of first refusal or similar right or obligation to sell, transfer, purchase, acquire or otherwise dispose of any material assets or Equity Interests, in each case, under which there are outstanding rights or obligations of any party thereto;
- (viii) all Contracts that provide for the assumption by any Applicable Company of any Tax or environmental Liability of any other Person;
- (ix) all Contracts for or related to any Indebtedness;
- (x) all Contracts that obligate any Applicable Company to make any capital commitment or capital expenditure, other than acquisition of inventory, in excess of [REDACTED];
- (xi) all Contracts that provide any Applicable Company rights as to operation, management or control of a partnership, joint venture or similar arrangement;
- (xii) all Contracts providing for the acquisition or disposition of any business, stock or assets of any other Person (whether by merger, sale of stock, sale of assets or otherwise) by any Applicable Company pursuant to which such Applicable Company has any ongoing or continuing obligations, including any Contract that involves the payment or receipt of any earn-out or similar contingent payment;

(xiii) all employment agreements, Contracts with independent contractors or consultants (or similar arrangements), and transaction, retention, change of control, accelerated vesting, severance, or any other amount or benefit that will be payable or due as a result of any of the Transactions or events contemplated by this Agreement (including the Pre-Closing Restructuring);

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

(xv) any settlement, conciliation or similar Contract with any Governmental Authority or third party pursuant to which any Applicable Company will have any material outstanding obligation after the date of this Agreement;

(xvi) any Contract for the settlement of any Action or threatened Action to the extent that any such Contract has any continuing obligations after the date of this Agreement;

(xvii) all Contracts to which any Applicable Company is a party or otherwise bound and the contracting counterparty of which (1) is a Governmental Authority or (2) has entered into such Contract in its capacity as prime contractor or other subcontractor of any Contract with a Governmental Authority and such Contract imposes upon such Applicable Company obligations or other Liabilities due to such Governmental Authority;

(xviii) all guarantees by any Applicable Company of any Indebtedness, Contract, or other obligation of another Person;

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

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

(xxi) all collective bargaining agreements or other agreements or similar Contracts with any labor organization, union or association to which any Applicable Company is a party;

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

(xxiii) any Related Party Agreement; and

(xxiv) any other Contract that is material to any Applicable Company and not previously disclosed pursuant to this Section 4.08(a).

(b) Each Material Contract is valid and binding on each Applicable Company party thereto and is in full force and effect. None of the Applicable Companies or, to the Applicable Companies' Knowledge, any other party thereto is in breach of or default under (or is alleged in writing to be in breach of or default under), or has provided or received any notice in writing of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, to the Knowledge of the Applicable Companies, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) has been made available to Buyer.

Section 4.09. Title to Assets; Real Property.

(a) Each Applicable Company has, or after giving effect to the Pre-Closing Restructuring, will have, good and valid (and, in the case of owned Real Property, valid and marketable fee simple) title to, or a valid leasehold interest in, or valid easements and rights of way to use in the manner used by such Applicable Company as of the date hereof, all Real Property and tangible personal property and other assets reflected in the Financial Statements, other than properties and assets that (i) have been sold or otherwise disposed of in the Ordinary Course since [REDACTED], (ii) are not required for the operation of any Applicable Company's Business in the Ordinary Course, or (iii) have been replaced. Each Applicable Company owns or has a valid leasehold interest in, or a valid license or right to use, or, after the consummation of the Pre-Closing Restructuring will own or will have a valid leasehold interest in, or will have valid license or right to use all of the tangible personal property necessary for the conduct of its Business. Each Applicable Company, as lessee, has, or after the consummation of the Pre-Closing Restructuring will have, the right under valid leases to use, possess and control all tangible personal property used (and not owned) by such Person as now used, possessed and controlled by such Applicable Company. All such properties and assets (including leasehold interests) are free and clear of Liens except for Permitted Liens.

(b) Section 4.09(b) of the Applicable Companies Disclosure Letter sets forth a true, correct and complete list of each parcel of Real Property owned in fee simple and indicates the Applicable Company that owns such Real Property. A copy of all title policies, surveys, and any other material documentation in the possession of Seller or Applicable Company that relate to the owned Real Property has been made available to Buyer. Except as set forth on Section 4.09(b) of the Applicable Companies Disclosure Letter, (i) no Applicable Company has granted, is a party to, or to any Applicable Company's Knowledge, is aware of the existence of, any outstanding options, rights of first offer, rights of first refusal, or other Contracts to purchase any owned Real Property, or any portion thereof or interests therein, (ii) no Applicable Company has (1) mortgaged or granted a deed of trust or analogous Lien on any of its owned Real Property or (2) subleased or licensed to a Person any material portion of such owned Real Property which materially adversely affects the use by the Applicable Company of any material portion of the remaining owned Real Property of the Applicable Company as it is used on the date hereof, and (iii) no Applicable Company has received notification from any Governmental Authority of any pending, threatened,

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

(c) Section 4.09(c) of the Applicable Companies Disclosure Letter sets forth a true, correct and complete list of all Real Property leases, licenses and occupancy rights agreements (if any), including all amendments, modifications and agreements related thereto, with respect to which an Applicable Company is or, after the consummation of the Pre-Closing Restructuring, will be the lessee, licensee or occupancy rights holder (collectively, the “Leases”). None of the Applicable Companies is or, after the consummation of the Pre-Closing Restructuring, will be a party to any Contract to purchase any leased Real Property or interest therein relating to, or intended to be used in the operation of, its Business, except to the extent any such Contract to purchase may be set forth in any of the Leases or has otherwise been made available to Buyer. A copy of each Lease has been made available to Buyer.

(d) Except as set forth in Section 4.09(d) of the Applicable Companies Disclosure Letter, as of the date hereof, (i) each Applicable Company has, or will on the Closing Date have, a valid leasehold interest in the applicable leased Real Property, free and clear of all Liens (except for Permitted Liens) except as the enforceability thereof may be limited by the Enforceability Exceptions; (ii) the Applicable Company has paid all rents and additional amounts that are due and has performed all material obligations required to be performed by it under such Real Property lease, including paid any deferred rents, whether due to COVID-19 or otherwise; (iii) there is no uncured default under any Lease by the Applicable Company who is the tenant thereunder or, to any Applicable Company’s Knowledge, any other party thereto, nor has any Seller or Applicable Company received or delivered written notice of any claim of such default; (iv) no event has occurred that, with the passage of time or the giving of notice or both, would constitute a material default by the Applicable Company who is the tenant under any Lease or, to any Applicable Company’s Knowledge, any other party thereto; (v) no security deposit or portion thereof deposited with respect to any Lease has been applied in respect of a breach or default by the Applicable Company who is the tenant thereunder which has not been redeposited in full; (vi) the other party to any Lease is not an Affiliate of any Seller, and otherwise does not have any economic interest in, the Applicable Company who is the tenant thereunder; (vii) the Transactions and the documents to be delivered at or before Closing (A) do not require the consent of any other Person due to the terms of such Real Property lease, whether as deemed “assignment,” “change of control,” or otherwise; (B) will not result in a breach or default under any Real Property lease; (C) will not give rise to any termination or recapture rights under any Real Property lease; (D) will not otherwise cause such Real Property lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing; (E) will not trigger any options, rights of first offer, rights of first refusal or other conditions with regards to interests in the owned Real Property; (viii) the Applicable Company who is the tenant under any Lease has not, and will not have as of the Closing Date, subleased, licensed, or otherwise granted any Person the right to use or occupy any material portion of such leased Real Property; and (ix) the Applicable Company has the right to occupy each parcel of leased Real Property pursuant to the terms of the relevant Real Property lease and to use the leased Real Property in the operation of its Business.

(e) All buildings, structures, improvements, fixtures, building systems and equipment, and all components thereof, located on the owned Real Property and leased Real Property are fit for service for the operation of the Business. Except as set forth on Section 4.09(e) of the

Applicable Companies Disclosure Letter, there are no anticipated capital expenditures due, planned or required within the next 24 months in connection with the owned Real Property and leased Real Property. Each owned Real Property and leased Real Property is in compliance with applicable laws, including zoning Laws, and with the requirements of the Americans with Disabilities Act (to the extent that the Applicable Companies are obligated to comply with such Laws).

Section 4.10. Rail Facilities and Railroad Assets.

(a) After the consummation of the Pre-Closing Restructuring, the Acquired Companies will hold valid property interests and operating rights in and to the rail lines depicted on the maps and specified by the mileposts referenced in Section 4.10(a) of the Applicable Companies Disclosure Letter, and to the adjacent yards, side tracks, spur tracks and other rail facilities appurtenant thereto (collectively, the “**Rail Facilities**”) sufficient to permit the applicable Acquired Company to conduct its Business, including rail freight operations on and over the Rail Facilities as such operations are conducted by Seller on the date of this Agreement. None of the Applicable Companies is or, after the consummation of the Pre-Closing Restructuring, will be a party to any Contract or subject to any Governmental Order that would deprive such Applicable Company of the ability to operate substantially as Seller operates over the Rail Facilities on the date of this Agreement.

(b) After the consummation of the Pre-Closing Restructuring, each Acquired Company will own, lease or have the legal right to use all rail cars, locomotives, tracks and other tangible assets and properties used in the conduct of such Acquired Company’s Business (together with the Rail Facilities, the “**Railroad Assets**”). Section 4.10(b) of the Applicable Companies Disclosure Letter sets forth a list of all rail cars and locomotives that are owned or leased by each Applicable Company. The Railroad Assets are fit for service, are in compliance with all applicable Laws and are suitable for the purposes for which they are used by the Applicable Company in its Business.

(c) Each Applicable Company has and, after the consummation of the Pre-Closing Restructuring, will have rights over a contiguous right-of-way with no gaps or strips between the end points of each Applicable Company’s rail lines, sufficient to conduct rail operations in substantially the same manner as the rail operations are conducted by such Applicable Company as of the date of this Agreement.

Section 4.11. Intellectual Property.

(a) Section 4.11(a) of the Applicable Companies Disclosure Letter contains a correct, current and complete list of all (i) Applicable Companies IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and the inventor(s), if any; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration, or application serial number, the issue, registration or filing date; and the current status; and (ii) all other Intellectual Property used in each Applicable Company’s Business. Except as set forth in Section 4.11(a) of the Applicable Companies Disclosure Letter, all required filings and fees related to the Applicable Companies IP Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Applicable Companies IP Registrations are otherwise in good standing. Except as set forth in Section 4.11(a) of the Applicable Companies Disclosure

Letter, Seller owns and, after the consummation of the Pre-Closing Restructuring, each Acquired Company will own, free and clear of all Liens (other than Permitted Liens), or have the right to use all Intellectual Property necessary to conduct such Acquired Company's Business (the "**Applicable Companies Intellectual Property**").

(b) The Applicable Companies Intellectual Property and the Applicable Companies' conduct of their respective Business, has not, does not and will not infringe, violate or misappropriate the Intellectual Property of any Person and, to the Applicable Companies' Knowledge, no Person is infringing, violating or misappropriating any Applicable Companies Intellectual Property.

(c) Section 4.11(c) of the Applicable Companies Disclosure Letter sets forth a list of all written license agreements with respect to any Applicable Companies Intellectual Property to which any Applicable Company is a party (other than licenses of software programs that are generally commercially available to the public or businesses, which have been non-exclusively licensed to any Applicable Company pursuant to "click-wrap," "click to download," "browsewrap," "shrink-wrap" or similar end-user licenses solely for their own internal use) (collectively, the "**IP Licenses**"), and pursuant to which such Applicable Company is authorized or otherwise has the right to use, distribute, sell, resell, license or sublicense any of the Applicable Companies Intellectual Property. All such IP Licenses are in full force and effect, subject to the Enforceability Exceptions and, to the Applicable Companies' Knowledge, there is no material default or material breach thereunder by any third party thereto.

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

Section 4.12. Insurance.

(a) Section 4.12(a) of the Applicable Companies Disclosure Letter sets forth a list of all policies or binders of fire, Liability, product Liability, umbrella Liability, real and personal property, workers' compensation, vehicular, directors' and officers' Liability, fiduciary Liability, pollution legal Liability, and other casualty and property insurance maintained by the Applicable Companies as of [REDACTED], and relating to the assets, business, operations, Employees, officers and directors of the Applicable Company or with respect to which such Applicable Company is a named insured or otherwise the beneficiary of coverage (collectively, the "**Insurance Policies**"), including the named insureds, policy/bond number, insurers, major limits, deductibles, and term under each Insurance Policy. Copies of the Insurance Policies have been

made available to Buyer. Such current Insurance Policies are in full force and effect and have been in full force and effect at all times since [REDACTED]. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. All such Insurance Policies (i) are valid and binding in accordance with their terms; (ii) are provided by carriers who are financially solvent; and (iii) have not been subject to any lapse in coverage. There are, and since [REDACTED], have been no claims related to the business of any Applicable Company pending under any such Insurance Policies as to which coverage has been denied. No Applicable Company is in default under, nor has otherwise failed to comply with, any provision contained in any such Insurance Policy.

(b) Each Applicable Company has provided proper notice under the Insurance Policies for any claims of injury, damage to property, or other covered events of which it is aware since [REDACTED], including for those incidents set forth in Section 4.12(b) of the Applicable Companies Disclosure Letter. To the Applicable Companies' Knowledge, there are no claims for cumulative injury or exposure, and none of the Applicable Companies has received any attorneys' liens with regard to said claims.

Section 4.13. Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.13(a) of the Applicable Companies Disclosure Letter, there are, and since [REDACTED], have been, no Actions pending or, to the Applicable Companies' Knowledge, threatened against or by any Applicable Company.

(b) Except as set forth in Section 4.13(b) of the Applicable Companies Disclosure Letter, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting any Applicable Company or any of its properties or assets.

Section 4.14. Operational Matters.

(a) Section 4.14(a) of the Applicable Companies Disclosure Letter lists:

(i) All citations, notices of violations or notices of investigation received by the Applicable Companies since [REDACTED] resulting in Liability (or alleging Liability if no final determination of Liability has been made) to the Applicable Company;

(ii) All orders, consent orders, administrative or judicial enforcement proceedings from any Governmental Authority received by the Applicable Companies since [REDACTED] relating to safety or health matters involving the business or operations of the Applicable Company;

(iii) All operating restrictions or slow orders currently in effect on the rail lines of the Applicable Companies; and

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

(b) Each of Camp Chase, CKIN Inc. and VVRC Inc. is a Class III rail carrier pursuant to the classifications set forth at 49 U.S.C. § 1201.

Section 4.15. Compliance with Laws; Permits.

(a) Each Applicable Company is, and since September 1, 2020 has been, in compliance in all material respects with all Laws applicable to them or their Business, properties or assets. Since [REDACTED], none of the Applicable Companies has received written notice from any Governmental Authority claiming a violation of any applicable Laws by any Applicable Company that remains uncured, and there is no pending, or to the Applicable Companies' Knowledge, threatened, proceeding concerning such Applicable Company's compliance with any such Laws.

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

Section 4.16. Environmental Matters.

(a) Except as set forth in Section 4.16(a) of the Applicable Companies Disclosure Letter, the Applicable Companies are, and [REDACTED] have been and, to the Applicable Companies' Knowledge, [REDACTED] the Applicable Companies have been, in compliance in all material respects with all Environmental Laws.

(b) Except as set forth in Section 4.16(b) of the Applicable Companies Disclosure Letter, none of the Applicable Companies have received from any Person, or are subject to, any (i) Environmental Notice, Environmental Claim, or Governmental Order, consent decree or settlement regarding Environmental Laws or Hazardous Materials, or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of on-going obligations or requirements as of the Closing Date.

(c) The Applicable Companies have obtained and are, and since [REDACTED] have been and, to the Applicable Companies' Knowledge, [REDACTED] the Applicable Companies have been, in compliance in all material respects with all Environmental Permits necessary for the ownership, lease, operation or use of the business or assets of the Applicable Companies, all such Environmental Permits are in full force and effect in accordance with Environmental Law, and all such Environmental Permits are identified in Section 4.16(c) of the Applicable Companies Disclosure Letter. A timely renewal application has been filed for any such Environmental Permit that will expire within [REDACTED], and no Applicable Company has received a written notice threatening to revoke, modify, cancel or terminate any such Environmental Permits. The execution, delivery and performance by Seller of this Agreement and the consummation of the Transactions by Seller does not and will not require any notice to, or approval or other consent from, any Governmental Authority for all such

Environmental Permits to remain in full force and effect after Closing. There is no condition, event or circumstance relating to Environmental Laws or Hazardous Materials that would reasonably be expected to prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Acquired Companies in any material respect as currently carried out, or that would reasonably be expected to result in a Material Adverse Effect.

(d) No Real Property or Rail Facilities currently, or to the Applicable Companies' Knowledge, formerly, owned, operated or leased by the Applicable Companies is listed on, or has been proposed for listing on, the National Priorities List (or Superfund Enterprise Management System (SEMS)) under CERCLA, or any similar state list.

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

(f) There has been no Release of any Hazardous Material by Seller or Applicable Companies or, to Seller's or Applicable Companies' Knowledge, any other Person, at, in, under, from, on or migrating to (i) the Real Property, Rail Facility or any other property currently operated by any Applicable Company; (ii) any property formerly owned, leased or operated by any Applicable Company, or (iii) at any off-site location to which Hazardous Materials generated by any Applicable Company were sent for treatment, recycling, storage or disposal, in the case of each of clauses (i)-(iii), in violation of Environmental Law or in a manner that would reasonably be expected to result in material Liability to any Applicable Company pursuant to any Environmental Law.

(g) None of the Applicable Companies has assumed by Contract, or, to the Applicable Companies' Knowledge, by operation of Law, any material Liability of a third party arising under or related to any Environmental Law or Hazardous Material.

(h) Seller has made available to Buyer correct copies of all environmental reports, assessments, audits, notices of violations, Governmental Orders, Environmental Permits, and all other material environmental, health, and worker safety documents pertaining to the Applicable Companies and their respective operations or their respective properties, or to any property formerly owned, leased or operated by any Applicable Company, that are in the possession or reasonable control of any Applicable Company.

Section 4.17. Employee Benefit Matters.

(a) Section 4.17(a) of the Applicable Companies Disclosure Letter contains a true and complete list of (i) all employee benefit plans as defined in Section 3(3) of ERISA (whether or not subject to ERISA); (ii) all other employment, consulting, independent contractor, pension, retirement, savings, health or welfare-benefit, flexible spending account, group insurance, bonus, severance pay, retention, change in control, deferred compensation, excess or supplemental benefit, paid time off, vacation, stock, stock option, equity or equity-based compensation, phantom stock, profit-sharing, fringe benefit, perquisite, Tax gross-up, indemnification, compensation and incentive plans, Contracts, schemes, programs, funds, or arrangements of any kind; and (iii) all other plans, Contracts, schemes, programs, funds, or arrangements providing money, services, property, or other benefits, whether written or oral, formal or informal, qualified or nonqualified,

funded or unfunded, and including any that have been frozen or terminated, in each case, (A) which pertain to any employee, former employee, director, officer, shareholder, member, manager, consultant, or independent contractor of the Applicable Companies or any Acquired Company ERISA Affiliate, (B) to which any Applicable Company or any of their respective Affiliates or any Acquired Company ERISA Affiliate is or has been a party or by which any of them is or has been bound, (C) which is sponsored or maintained by the Applicable Companies, (D) with respect to which the Applicable Companies or Affiliates or any Acquired Company ERISA Affiliate contributes or has an obligation to contribute, or (E) with respect to which the Applicable Companies or Affiliates or any Acquired Company ERISA Affiliate may otherwise have any Liability (including any contingent Liability and any Liability of such plan or arrangement formerly maintained by the Applicable Companies, any of their Affiliates or any current or former Acquired Company ERISA Affiliate) (collectively, the **“Acquired Company Benefit Plans”**). For purposes of this Agreement, **“Acquired Company ERISA Affiliate”** shall mean any corporation, limited liability company or other entity that is included in a controlled group within which any of the Acquired Companies is also included, as provided in Section 414(b) of the Code or Section 4001 of ERISA; or which is a trade or business under common control with any of the Acquired Companies, as provided in Section 414(c) of the Code; or which constitutes a member of an affiliated service group within which any of the Acquired Companies is also included, as provided in Section 414(m) of the Code; or which is required to be aggregated with any of the Acquired Companies pursuant to regulations issued under Section 414(o) of the Code.

(b) True and complete copies of the Acquired Company Benefit Plans (and, if applicable, related trust or funding agreements, insurance policies and service provider agreements) and all amendments not already incorporated thereto and written descriptions if not reduced to a written document, have been made available to Buyer together with (i) the [REDACTED] annual reports (Form 5500 including, if applicable, Schedule B thereto) required to be filed, (ii) the most recent summary plan description and all summaries of material modifications, (iii) the [REDACTED] IRS determination letter or opinion letter issued with respect to any Acquired Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code, (iv) annual testing results (including nondiscrimination testing results) for [REDACTED] years, if applicable, (v) the [REDACTED] actuarial valuations, if applicable, and [REDACTED] financial statements for each of the Acquired Company Benefit Plans and (vi) all documents filed with and all communications to or from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation or any other Governmental Authority during [REDACTED].

(c) Each Acquired Company Benefit Plan and their related trusts intended to be qualified under Section 401(a) and 501(a) of the Code is so qualified, has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype or volume submitter plan, can rely on an opinion or advisory letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Acquired Company Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and to the Applicable Companies' Knowledge, no event or omission has occurred that could adversely affect the Tax-qualified status of any such Acquired Company Benefit Plan or the Tax-exempt status of any related trust.

(d)

(i) Each Acquired Company Benefit Plan has been operated or administered and is in compliance with its terms in all material respects and all applicable Laws (including ERISA and the Code and the regulations promulgated thereunder) and has been administered in accordance with applicable Laws and regulations and its terms;

(ii) All benefits, contributions and premiums required by and due under the terms of each Acquired Company Benefit Plan or applicable Law have been timely paid or have been accrued in accordance with the terms of such Acquired Company Benefit Plan, the terms of all applicable Laws and GAAP, and none of the Acquired Company Benefit Plans has any unfunded Liabilities as of the date of this Agreement that are not reflected in the Applicable Companies' audited financial statements;

(iii) With respect to any Acquired Company Benefit Plan, no event has occurred or is reasonably expected to occur that has resulted in or would subject the Applicable Companies to a Tax under Section 4971 of the Code or the assets of the Applicable Companies to a lien under Section 430(k) of the Code;

(iv) There is not and has not been, nor is there pending or, to the Applicable Companies' Knowledge, threatened, audit, inquiry, examination, claim or dispute relating to an Acquired Company Benefit Plan, other than claims for benefits in the Ordinary Course, and no Acquired Companies Benefit Plan has within [REDACTED] been the subject of an examination or audit by a Governmental Authority; and

(v) Each of the Acquired Company Benefit Plans satisfies the minimum coverage and nondiscrimination requirements under the Code.

(e) None of the Applicable Companies or Acquired Company ERISA Affiliate has ever sponsored, maintained, contributed to or been required to contribute to any (i) a "multiemployer plan" as defined in Sections 3(37) of ERISA, (ii) plan subject to the funding requirements of Section 412 of the Code, Title IV of ERISA or Section 302 of ERISA, (iii) "multiple employer plan" as described in Section 413(c) of the Code or (iv) "multiple employer welfare arrangement" within the meaning of 3(40)(A) of ERISA, and none of the Acquired Companies or any Acquired Company ERISA Affiliate has any Liability or any obligation under Section 302 or Title IV of ERISA or Section 412 of the Code.

(f) None of the Acquired Company Benefit Plans provides for medical, life insurance or other welfare-type benefits to any employees of any Applicable Company after their employment is terminated (other than as required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code or under a similar state Law regarding medical continuation coverage ("COBRA")), and none of the Applicable Companies or any Acquired Company ERISA Affiliate has ever promised to provide such post-termination benefits or has any obligation to provide such benefits. None of the Applicable Companies or any Acquired Company ERISA Affiliate has any Liability on account of a violation of COBRA.

(g) Each Acquired Company Benefit Plan that constitutes in any part a "nonqualified deferred compensation plan" within the meaning of Section 409A(d)(1) of the Code has been operated and maintained in operational and documentary compliance with Section 409A of the

Code and applicable guidance thereunder. No payment to be made under any Acquired Company Benefit Plan is, or to the Applicable Companies' Knowledge, will be, subject to the penalties of Section 409A(a) of the Code. None of the Applicable Companies has or will have any obligation to pay any tax "gross-up" or similar "make-whole" payments under Section 409A of the Code. None of the Applicable Companies or any Acquired Company ERISA Affiliate has any Liability in connection with a violation of the Patient Protection and Affordable Care Act of 2010, the Health Care and Education Reconciliation Act of 2010 or under Chapter 43 of the Code.

(h) Except as set forth in Section 4.17(h) of the Applicable Companies Disclosure Letter, neither the execution and delivery of this Agreement, nor the consummation of the Transactions could (either alone or in conjunction with any other event): (i) result in the payment to any current or former employee, director or consultant of any of the Applicable Companies of any money or other property; (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any current or former employee, director or consultant of any of the Applicable Companies or otherwise under any Acquired Company Benefit Plan; (iii) limit or restrict the ability of Buyer, its Affiliates or any member of the Buyer Group to merge, amend or terminate any Acquired Company Benefit Plan; or (iv) result in any "parachute payment" within the meaning of Section 280G(b) of the Code. None of the Applicable Companies has any obligation to pay any tax "gross-up" or similar "make-whole" payments to any current or former employee, director or consultant of any of the Applicable Companies or any Acquired Company ERISA Affiliate, including, but not limited to, under Section 4999 of the Code.

Section 4.18. Employment Matters.

(a) Section 4.18(a) of the Applicable Companies Disclosure Letter sets forth a list of each current employee and each current independent contractor of the Applicable Companies containing for each such individual: (i) name and status as an employee or contractor; (ii) the entity with which they are employed or engaged; (iii) work location (city and state); (iv) start date; (v) position and job title; (vi) fulltime, part-time, or temporary status; (vii) base salary or base hourly wage or Contract rate; (viii) target bonus rates or target commission rates; (ix) any other compensation payable to them (including compensation payable pursuant to any other bonus, deferred compensation, commission arrangements or other compensation, and/or severance payments); (x) any promises or commitments made to them with respect to changes or additions to their compensation or benefits; (xi) visa status, if applicable, and visa type and expiration date (xii) Contract termination date, if applicable, (xiii) designation of whether they are classified as exempt or non-exempt for purposes of the Fair Labor Standards Act and any similar state Law; and (xiv) accrued but unused vacation time and/or paid time off.

(b) Except as set forth in Section 4.18(b) of the Applicable Companies Disclosure Letter, no Applicable Company is or has ever been a party to or bound by any collective bargaining agreement, Contract or understanding with a labor union or labor organization involving any employees of such Applicable Company and no Applicable Company is negotiating any such agreement. None of the Applicable Companies is, nor since [REDACTED] has been, engaged in any unfair labor practice, and there is (i) no unfair labor practice charge or complaint pending nor, to the Applicable Companies' Knowledge, threatened against any Applicable Company before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or

under any collective bargaining agreement is pending or, to the Applicable Companies' Knowledge, threatened against any Applicable Company, (ii) no strike, labor dispute, picketing, slow down or other work stoppage or disruption pending against any Applicable Company or, to the Applicable Companies' Knowledge, threatened against any Applicable Company and (iii) no union representation campaign, petition or proceeding existing with respect to the employees of any Applicable Company or, to the Applicable Companies' Knowledge, threatened against any Applicable Company.

(c) Except as set forth in Section 4.18(c) of the Applicable Companies Disclosure Letter, all persons employed by the Applicable Companies are employees at-will or otherwise employed such that the Applicable Company may lawfully terminate their employment at any time, with or without cause and without incurring severance or similar costs. A true and correct copy of any form of non-competition, non-solicitation or confidentiality agreement currently in force with any of the employees or consultants of the Applicable Companies, and any variances therefrom, has been made available to Buyer, along with a list specifying which employees are subject to such form agreement(s).

(d) The Applicable Companies are, and have been since [REDACTED] in material compliance with all applicable Laws relating to labor, labor relations or employment, including any provisions thereof relating to equal employment opportunity, employment policies, discrimination, retaliation, harassment (including sexual harassment), whistleblowing, employee classification (including exempt versus non-exempt and contractor versus employee), wages, hours, overtime regulation, employee safety and health, immigration control and work authorization (including with respect to Form I-9), drug testing, termination pay, vacation pay, railroad retirement, railroad unemployment insurance, fringe benefits, collective bargaining and the payment and/or accrual of the same and all Taxes, insurance and all other costs and expenses applicable thereto, and the Applicable Companies are not liable for any arrearage, or any Taxes, costs or penalties for failure to comply with any of the foregoing. During the past three years no Applicable Company has implemented or effectuated a "plant closing," "mass layoff," partial "plant closing," "relocation," or "termination" (each as defined in the Worker Adjustment and Retraining Notification Act or similar state or local Law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Applicable Companies.

(e) There are, and since [REDACTED] have been, no Actions pending or, to the Applicable Companies' Knowledge, threatened against the Applicable Companies brought by, regarding, or otherwise involving any employee or independent contractor of the Applicable Companies, including any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage or hours violations, unpaid wages, misclassification, unpaid commissions, wrongful termination or any other employment-related matter arising under applicable Laws.

(f) To the Knowledge of the Applicable Companies, during [REDACTED], (i) no allegations of sexual harassment, discrimination or misconduct have been made against any (A) officer or director of the Applicable Companies, or (B) any employee of the Applicable Companies who, directly or indirectly, supervises or has managerial authority over other employees or service providers of the Applicable Companies, and (ii) no Applicable Companies has entered into any

settlement agreement or conducted any investigation related to allegations of harassment, discrimination or misconduct by an employee, contractor, director, officer, or other representative of the Applicable Companies.

(g) Each person whom the Applicable Companies retain or has retained as an independent contractor qualifies or qualified as an independent contractor and not as an employee of the Applicable Company under all applicable Laws and no such individual is or has been eligible for any Acquired Company Benefit Plans on account of such individual's engagement as an independent contractor.

Section 4.19. Taxes. Except as set forth in Section 4.19 of the Applicable Companies Disclosure Letter:

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

(b) There are no disputes, audits, examinations, investigations or proceedings pending or threatened in writing in respect of any Taxes or Tax Returns of any Seller or any Applicable Company, and no Seller or any Applicable Company is a party to any litigation or administrative proceeding relating to Taxes.

(c) No Seller or any Applicable Company (i) is a party to any Tax allocation, sharing or indemnity Contract or arrangement, (ii) has been a member of an affiliated, consolidated, unified or combined group (other than a group the common parent of which is an Applicable Company), or (iii) has any Liability for Taxes of any Person (other than such Applicable Company) under Treasury Regulation section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by Contract, or otherwise.

(d) No Seller or any Applicable Company has been a "distributing corporation" or a "controlled corporation" in any distribution occurring during the three years prior to the date of this Agreement in which the parties to such distribution treated the distribution as one to which Section 355 of the Code is applicable.

(e) No Seller or any Applicable Company has granted any waiver of any federal, state, local or non-U.S. statute of limitations with respect to, or granted any extension of a period of time for the assessment or payment of, any Tax.

(f) No Seller or any Applicable Company is or has been a party to any "listed transaction," or "reportable transaction" as defined in Section 6707A(c)(2) of the Code and Section 1.6011-4(b)(2) of the Treasury Regulations.

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

(h) Section 4.19(h) of the Applicable Companies Disclosure Letter lists the tax classification of each Applicable Companies for U.S. federal and state income Tax purposes, states whether such Applicable Company has had such tax classification since inception, and lists any election made under Treasury Regulations Section 301.7701-3 (or any applicable corresponding provision of state, local or non-U.S. Law).

(i) No Seller or any Applicable Company has, has ever had, or has ever applied for, any Indebtedness pursuant to Section 7(a) of the Small Business Act or Section 1102 of the CARES Act.

(j) There are no unpaid Taxes of any Applicable Company with respect to a Pre-Closing Tax Period that will not be reflected in Closing Net Working Capital or Closing Indebtedness.

(k) At all times since formation, each Applicable Company has been properly treated as a disregarded entity or a corporation for the U.S. federal income Tax purposes (and any corresponding provisions of state, local or foreign Law).

(l) No Seller or any Applicable Company has, or has ever had, any Liability for any Tax under Section 1374 or Section 1375 of the Code, and none will be subject to Tax under Section 1374 of the Code with respect to the Transactions.

(m) Except as provided on Section 4.19(m) of the Applicable Companies Disclosure Letter, each Applicable Company is exempt from sales, use and property Taxes in each jurisdiction in which it operates.

Section 4.20. Brokers. None of the Applicable Companies, nor any of their respective officers or directors on behalf of the Applicable Companies, has employed any broker or finder or incurred any Liability for any broker's fees, commissions or finder's fees in connection with any of the Transactions.

Section 4.21. Transactions with Related Parties. Except as set forth on Section 4.21 of the Applicable Companies Disclosure Letter, no Related Party (a) is a party to any Contract with or binding upon any Applicable Company or any of its assets, rights or properties (each, an "**Related Party Agreement**"), (b) has any interest in any asset or property owned, leased or used by any Applicable Company, (c) provides any service to or for the benefit of any Applicable Company or (d) has engaged in any transaction with any Applicable Company, other than (x) arrangements or Contracts for employment or (y) any arrangements or Contracts between one Acquired Company and another Acquired Company listed on Section 4.21 of the Applicable Companies Disclosure Letter.

Section 4.22. Material Customer; Material Vendor.

(a) Section 4.22(a) of the Applicable Companies Disclosure Letter sets forth a consolidated list of the top ten customers of CKIN Inc., Camp Chase and VVRC Inc. based on dollar amount of sales from [REDACTED] (each, a “**Material Customer**”). Since [REDACTED], none of the Applicable Companies has received any written notice from any of their respective Material Customers that any such Material Customer intends to terminate its relationship with respect to the purchase of products or services from such Applicable Company.

(b) Section 4.22(b) of the Applicable Companies Disclosure Letter sets forth a consolidated list of the top ten vendors of CKIN Inc., Camp Chase and VVRC Inc. based on dollar amount of sales from [REDACTED] (each, a “**Material Vendor**”). Since [REDACTED], none of the Applicable Companies has received any written notice from any of their respective Material Vendors and, to the Applicable Companies’ Knowledge, no facts exist to the effect that any such Material Vendor will terminate its relationship with respect to the purchase of products or services by such Applicable Company.

Section 4.23. Campaign Finance.

(a) Seller and Applicable Companies are, and since [REDACTED] have been, in compliance in all material respects with all applicable Campaign Finance Laws.

(b) No Seller or Applicable Company has received any written notice from, or is subject to, any pending Action or threatened Action of any Governmental Authority or other Person alleging that the applicable Seller or Applicable Company (i) may be, or may have been, in material violation of any Campaign Finance Law or (ii) may have any Liabilities arising under applicable Campaign Finance Law, the subject of which is in each case unresolved.

Section 4.24. Lobbying.

(a) Except as set forth in Section 4.24 of the Applicable Companies Disclosure Letter, since [REDACTED] no Seller or Applicable Company has engaged, either directly or through their officers, or to the Knowledge of the Applicable Companies, employees or agents, in any activity that constitutes lobbying under the applicable Lobbying Laws of any jurisdiction in which the applicable Seller or Applicable Company does business.

(b) Seller and Applicable Companies are, and since [REDACTED] have been, in compliance in all material respects with all applicable Lobbying Laws.

(c) No Seller or Applicable Company has received any written notice from, or is subject to, any pending Action or threatened Action of any Governmental Authority or other Person alleging that the Applicable Company (i) may be, or may have been, in material violation of any Lobbying Law or (ii) may have any material Liabilities arising under applicable Lobbying Law, the subject of which is in each case unresolved.

Section 4.25. Anti-Corruption.

(a) Each Applicable Company, and their respective directors, officers and to the Knowledge of the Applicable Companies, employees and agents, are and have been since [REDACTED] in compliance with Anti-Corruption Laws.

(b) Since [REDACTED], no Applicable Company nor their respective directors, officers or to the Knowledge of the Applicable Companies, employees or agents, has offered, promised, provided, or authorized the provision of any money, property, or other thing of value, directly or indirectly, to any Person to improperly influence official action or secure an improper advantage, or to encourage the recipient to breach a duty of good faith or loyalty or the policies of their employer, or otherwise violated any Anti-Corruption Laws.

(c) None of the Applicable Companies has (i) made any voluntary, directed, or involuntary disclosure to any Governmental Authority or similar agency with respect to any alleged act or omission arising under or relating to any non-compliance with any Anti-Corruption Laws; (ii) been the subject of any inquiry or enforcement proceedings for violations of Anti-Corruption Laws; or (iii) violated or received in writing any notice, request, penalty, or citation for any actual or potential non-compliance with Anti-Corruption Laws.

Section 4.26. New Companies. Each New Company was formed solely for the purpose of engaging in the Transaction. Except for Liabilities incurred in connection with its formation or the Transaction, each New Company has not, and prior to the Measurement Time will not have, incurred, directly or indirectly, any Liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person other than the documents executed in connection with the Pre-Closing Restructuring substantially in the form attached hereto.

Section 4.27. Disclaimer. Except for the representations and warranties expressly set forth in this Article 4, neither the Seller, the Applicable Companies nor any other Person on behalf of any Seller or any Applicable Company makes any express or implied representation or warranty in connection with the Transactions. Neither the Seller, the Applicable Companies or any other Person will have or be subject to any Liability to Buyer or any other Person resulting from the distribution to Buyer or its Representatives or Affiliates, or Buyer's or its Representatives' or Affiliates' use of, any information, documents, projections, forecasts or any other materials made available to Buyer or its Representatives or Affiliates in certain "data rooms" or management presentations in connection with Buyer's consideration and review of the Transactions, unless any such information is included in a representation or warranty contained in this Article 4; provided, however, that the foregoing limitation on the Liability of Seller and the Applicable Companies shall not apply to the extent any such information, documents, projections, forecasts or other materials are, to the Knowledge of any Seller or Applicable Company, false or deliberately misleading.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

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

Section 5.01. Corporate Existence and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer has the requisite power and authority to enter into and perform its obligations under this Agreement and to consummate the Transactions.

Section 5.02. Authority. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which it is a party, and the consummation of the Transactions and thereby, are within its powers, and have been duly authorized by all necessary action on the part of Buyer. This Agreement has been, and each Ancillary Agreement to which Buyer is a party will be, duly and validly executed and delivered by Buyer, and, assuming the due and valid execution by the other parties hereto and thereto, this Agreement and each Ancillary Agreement to which Buyer is a party constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to the Enforceability Exceptions.

Section 5.03. Consents and Approvals. No consent, approval, clearance, waiver, Permit or Governmental Order of or from, or filings or registrations with, or notice to, any Governmental Authority or with any third Person are necessary in connection with the execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party or the consummation by Buyer of the Transactions and thereby, except for (a) the STB Approval and (b) as otherwise set forth in Section 5.03 of the Buyer Disclosure Letter, except where the failure to obtain such consent, approval, clearance, waiver, Permit or Governmental Order would not prevent, materially delay or materially impede the performance by Buyer of its obligations under this Agreement or to consummate the Transactions.

Section 5.04. Noncontravention. Neither the execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party nor the consummation by Buyer of the Transactions and thereby, will (a) violate any provision of the Organizational Documents of Buyer, or (b) assuming that the consents, approvals and filings referred to in Section 5.03 are duly obtained or made, (i) violate any Law applicable to Buyer or any of its properties or assets, or (ii) violate, conflict with, result in a breach of any provision of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Buyer under, any of the terms, conditions or provisions of any Contract or other instrument or obligation to which Buyer is a party, or by which it or any of its properties or assets may be bound or affected, except in the case of clause (b) above where such violation, conflict, breach or default would not reasonably be expected to prevent, materially delay or materially impede the performance by Buyer of its obligations under this Agreement or to consummate the Transactions.

Section 5.05. Sufficient Funds. At the Closing, Buyer will have access to sufficient cash and other sources of immediately available funds to pay the amounts to be paid in accordance

with the terms of Section 2.02(a) and any other amounts contemplated to be paid at the Closing to consummate the Transactions on the terms and subject to the conditions set forth herein.

Section 5.06. Litigation. There are no Actions pending or, to Buyer's Knowledge, threatened against or by Buyer or any of its Affiliates that challenge or seek to prevent, enjoin or otherwise delay the consummation of the Transactions or would restrict or limit the ability of Buyer to perform fully Buyer's obligations under this Agreement or any Ancillary Agreement.

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

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

Section 5.09. No Other Representations. In making its determination to proceed with the transactions contemplated by this Agreement, Buyer has relied solely on the results of its own independent investigation and verification process and the representations and warranties of Seller expressly and specifically set forth in this Agreement (each as qualified by the Applicable Companies Disclosure Letter) and in any other Transaction Agreements. Notwithstanding the delivery or disclosure to Buyer or any of its Representatives or Affiliates of any documentation or other information by Seller, the Acquired Companies or any of their Representatives or Affiliates with respect to any one or more of the foregoing matters, Buyer (on behalf of itself and its Affiliates) acknowledges and agrees that no representation or warranty of any kind whatsoever, express or implied, at Law or in equity, is made or shall be deemed to have been made, including with respect to projections, budgets, forecasts or other forward-looking financial information concerning the future revenue, by or on behalf of Seller, the Acquired Companies or any of their Affiliates, except for the representations and warranties expressly set forth in Article 3 and Article 4.

ARTICLE 6
COVENANTS*Section 6.01. Conduct of the Applicable Companies.*

(a) From the date hereof until the earlier of the termination of this Agreement in accordance with Section 9.01 and the Closing Date, except as required by this Agreement, Law or any Governmental Authority with jurisdiction over any Seller or any of the Applicable Companies, as disclosed on Section 6.01 of the Applicable Companies Disclosure Letter, or with Buyer's consent, Seller shall cause each Applicable Company to (i) conduct their respective businesses in the Ordinary Course, consummate the Pre-Closing Restructuring in accordance with Section 6.13 and (ii) use commercially reasonable efforts to maintain and preserve intact its business, relationships with customers, suppliers, employees, Governmental Authorities, and other Persons having dealings with such Applicable Company.

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

(i) other than to effectuate the Pre-Closing Restructuring in accordance with this Agreement, amend or modify its Organizational Documents;

(ii) other than to effectuate the Pre-Closing Restructuring in accordance with this Agreement, issue, deliver, sell, pledge or otherwise transfer, dispose of or authorize the issuance, delivery, sale, pledge or other transfer or disposition of, or grant any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any Equity Interests in any such Applicable Company;

(iii) cancel, compromise, waive, or release any material right or claim;

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

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

(vi) other than to effectuate the Pre-Closing Restructuring in accordance with this Agreement, enter into any additional Material Contract or modify, amend or terminate any Material Contract (other than a termination upon any expiration of the term of any Material Contract);

(vii) to the extent not already included in the annual budget of the Applicable Company that has been made available to Buyer prior to the date of this Agreement, make expenditures in excess of [REDACTED] in the aggregate; provided that each Applicable

Company shall be permitted to make expenditures in accordance with any requirements existing as of the date hereof under any Contract to which such Applicable Company is a party;

(viii) other than to effectuate the Pre-Closing Restructuring in accordance with this Agreement, merge or consolidate with any other Person, or acquire or dispose of any assets of any Person outside the Ordinary Course;

(ix) make any loans, advances or capital contributions to, or investments in, any other Person, other than any Applicable Company or as performed in the Ordinary Course;

(x) change any Applicable Company's methods of accounting, or any accounting policy or practice, except for any such change required by reason of a concurrent change in GAAP;

(xi) (A) enter into any employment, independent contractor, consulting or other compensatory agreement with any employee (or individual who would be an employee if employed on the date hereof) or any amendment to any such existing agreement; (B) adopt or increase any severance or termination pay for any employee or other service provider; (C) increase the base or annual bonus compensation payable to any employee (or individual who would be an employee if employed on the date hereof); (D) hire, engage or terminate (other than for cause) the employment or services of any employee or other service provider (or individual who would be an employee or service provider if employed or engaged on the date hereof); or (E) establish, amend or terminate any Acquired Company Benefit Plan (or employee benefit plan, arrangement or agreement that would be an Acquired Company Benefit Plan if in effect on the date hereof), or accelerate the vesting, funding or time of payment or provide discretionary benefits under any Acquired Company Benefit Plan;

(xii) enter into or negotiate any collective bargaining agreement or other agreement with any labor union or similar organization;

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

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

(xv) adopt a plan of liquidation or dissolution;

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

(xvii) abandon or discontinue rail service over any track or facilities operated by any Applicable Company;

(xviii) grant any material license or sublicense of any rights under or with respect to any Intellectual Property other than in the Ordinary Course;

(xix) grant to any Person any easement, license, trackage rights, haulage rights or other right to use, access or operate over, to interchange or handle rail cars, or to provide service to customers on, over or along any track, facilities or other property owned or operated by any Applicable Company;

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

(xxi) other than to effectuate the Pre-Closing Restructuring in accordance with this Agreement, sell or dispose of any assets material to the operation of such Applicable Company;

(xxii) initiate or settle any Action that would result in any Liability to the Acquired Companies or would involve equitable remedies or an admission by any Acquired Company of wrongdoing or violation of Law; or

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

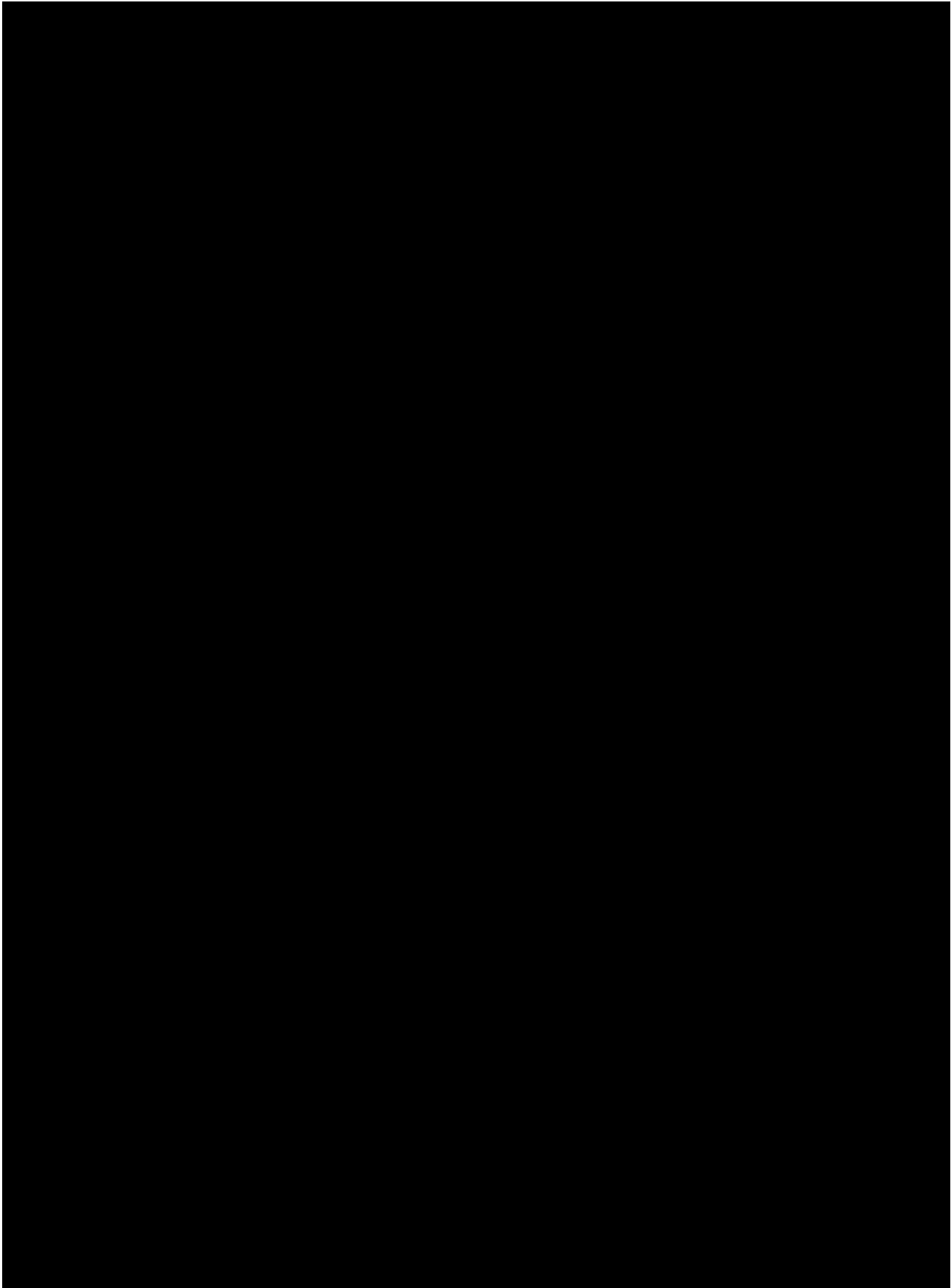
In the event any Applicable Company is required by Law or any Governmental Authority with jurisdiction over any of the Applicable Companies to take any of the foregoing actions, such Applicable Company shall promptly notify Buyer of such event and such actions and, upon reasonable request by Buyer, provide Buyer with additional information related thereto.

Subject to the terms and conditions of this Agreement, Buyer agrees that the operation of each Applicable Company's business remains in the dominion and control of such Applicable Company until the Closing.

Section 6.02. Efforts; Further Assurances.

(a)





[REDACTED]

(c) To the extent permitted by Law, each of the parties shall promptly notify and, if in writing, furnish to Seller and Buyer copies of (i) any filings, notices, petitions, statements, registrations, submissions of information, applications and other documents that such party or any of its Affiliates submits to any Governmental Authority and (ii) any correspondence or communications between such party or any of its Affiliates or Representatives, on the one hand, and any Governmental Authority, on the other hand, in each case relating to the Transactions. To the extent permitted by Law, each of the parties shall consult with and permit Seller and Buyer to review in advance any proposed filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and any written or oral communication or correspondence by such party to any Governmental Authority relating to the Transactions, and shall consider in good faith the views of such other parties in connection with any proposed filings, notices, petitions, statements, registrations, submissions of information, applications, other documents, communications or correspondence. No party shall participate, or permit any of its Affiliates or Representatives to participate, in any meeting or discussion with any Governmental Authority in respect of any filings, notices, petitions, statements, registrations, submissions of information, applications or other documents, or any investigation, review or inquiry, in each case relating to any of the Transactions, unless such party consults with Seller and Buyer in advance of such meeting or discussion, and, to the extent permitted by such Governmental Authority, gives Seller and Buyer the opportunity to participate in such meeting or discussion; provided, however, that Buyer shall at all times have the right to determine and control the strategy with respect to obtaining the STB Approval.

[REDACTED]

Section 6.03. Termination of Affiliate Obligations On or before the Closing Date, except for this Agreement, the New CKIN Lease, any Ancillary Agreements, all Related Party Agreements and all Accounts Receivable and Accounts Payable to or from a Related Party shall be terminated in full as of the completion of the Closing without Liability and, from and after the completion of the Closing, (a) the Acquired Companies shall have no surviving obligations or Liabilities thereunder to any Related Party (other than the Acquired Companies) whatsoever, and (b) no Related Party (other than the Acquired Companies) shall have any surviving obligations or Liabilities thereunder to the Acquired Companies whatsoever, in each case, in connection with such Related Party Agreements, Accounts Receivable or Accounts Payable.

Section 6.04. Public Announcements. Buyer and Seller agree that no public release or announcement concerning the terms of this Agreement or the Transactions shall be issued or caused to be issued by any party hereto or any of their Affiliates or Representatives without the prior written consent of Buyer or Seller, as applicable, except for such release or announcement as may be required by Law, in which case the party required to make the release or announcement

shall use commercially reasonable efforts to allow the other parties reasonable time to comment on such release (and will consider any such comments in good faith) or announcement in advance of such issuance. Nothing in this Section 6.04 shall limit or restrict Buyer Group from making non-public announcements regarding this Agreement and the Transactions to their and their Affiliates' respective Representatives as necessary in connection with the ordinary conduct of their respective businesses (so long as such Persons agree to keep the terms of this Agreement confidential) and nothing herein shall prevent Buyer Group from making customary disclosures, including the key economic terms of the Transactions and the return realized as a result thereof, to current or prospective investors in connection with fundraising, marketing or reporting activities.

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

(a) From [REDACTED] and subject to applicable Law and the Confidentiality Agreement, Seller shall (and shall cause each Applicable Company to) (i) give Buyer and its Representatives reasonable access to the properties and employees of such Applicable Company, as applicable, during regular business hours and upon reasonable advance notice (which access shall include the right to conduct sampling reasonably acceptable to Seller) and (ii) furnish to Buyer and its Representatives such financial and operating data and other information relating to such Applicable Company as such Persons may reasonably request; provided that (A) Buyer and its Representatives shall conduct any such activities in such a manner as not to interfere unreasonably with the business or operations of the Acquired Companies and (B) no Applicable Company shall be required to take any action which would, in the reasonable judgment of such Applicable Company, constitute a waiver of the attorney-client or other privilege or would compromise any confidential information.

(b) Notwithstanding anything in the Confidentiality Agreement to the contrary, for a period of [REDACTED], Seller shall, and shall cause its post-Closing Affiliates (excluding, for the avoidance of doubt, Buyer and the Acquired Companies) and Representatives to, treat as confidential and safeguard any and all information, knowledge, data, ideas, concepts, plans and strategies whether now or hereafter existing relating to or arising from the past, current or planned business, activities, finances and/or operations of the Acquired Companies and the Business that is known to Seller or such Affiliates (the "Confidential Information"), except (a) as otherwise agreed to in writing by Buyer, (b) for disclosures to any Governmental Authority having jurisdiction to require disclosure or to any arbitral body to the extent required by same, (c) as otherwise may be required by applicable Law, (d) in connection with enforcing any rights under this Agreement or any Ancillary Agreement, (e) as required for internal audit, financial and Tax purposes, or (f) for disclosures to its Representatives in the ordinary course of business, but only if such Representatives are made aware of and directed to abide by the provisions of this Section 6.05, and Seller shall be responsible for any breach hereof by such Representatives. Notwithstanding the foregoing, if any Seller or any of its Affiliates or Representatives is requested or required disclose any Confidential Information in response to a court order or as otherwise requested or required by any Law, or to comply with Tax reporting requirements (including the preparation of Tax Returns), regulatory reporting, audit or other compliance obligations, to the extent permitted by such Law or other compliance obligation, Seller, Affiliate or Representative

thereof will notify Buyer in writing of such request or obligation as soon as practicable after Seller, Affiliate or Representative thereof becomes aware of it and, if possible, before any information is disclosed, so that a protective order or other appropriate remedy may be obtained by Buyer at Buyer's sole expense. The parties acknowledge that the confidentiality obligations set forth in this Section 6.05 shall not extend to information, knowledge and data that (i) is or becomes generally available to the public other than as a result of a disclosure by Seller or any of its Affiliates or Representatives, (ii) is available or becomes available to Seller or any of its Affiliates or their respective Representatives on a non-confidential basis from a source other than Buyer, any Acquired Company or any other Seller, (iii) is requested or required by applicable Law to be disclosed or (iv) was independently developed by Seller, its Affiliates or their respective Representatives without reference to or otherwise utilizing any Acquired Company's information. For the avoidance of doubt, the provisions of this Section 6.05(b) will not apply to any information regarding the negotiation or execution of this Agreement or the consummation of the Transactions contemplated hereby or the public announcement thereof, which shall be governed solely by Section 6.04. For the avoidance of doubt, the provisions of this Section 6.05(b) will not apply to any information, knowledge, and experience that Seller, its Representatives and Affiliates possess regarding the operation of railroads that has been independently developed by the Seller without reference to or utilizing any Acquired Company's Confidential Information.

Section 6.06. Taxes.

(a) Notwithstanding anything to the contrary in this Agreement, Buyer, on the one hand, and Seller, on the other, shall [REDACTED]

[REDACTED] The party responsible under Law for filing the Tax Returns with respect to such Transfer Taxes shall prepare and timely file such Tax Returns and promptly provide a copy of such Tax Return to the other party.

(b) The parties shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns of or with respect to any Acquired Company, or other proceeding with respect to Taxes of or with respect to any Acquired Company. Such cooperation shall include the retention and (upon another party's request) the provision of records and information that are relevant to any such Tax Return or audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided under this Agreement. The parties agree to retain all books and records with respect to Tax matters pertinent to the Acquired Companies relating to any Tax period beginning before the Closing Date until the expiration of the statute of limitations of the respective Tax periods and to abide by all record retention agreements entered into with any Taxing Authority.

Section 6.07. Employees.

(a) [REDACTED]
[REDACTED] Buyer shall provide, or shall cause to be provided, to each individual employed by an Acquired Company as of immediately prior to the Closing Date: (i) a base salary or hourly wage

rate (as applicable) that is not less than the base salary or hourly wage rate (as applicable) provided to such Employee immediately prior to the Closing Date and (ii) cash incentive compensation opportunities and other compensation and benefits that are substantially comparable in the aggregate to those provided to similarly situated employees of Buyer and its Subsidiaries. The employment of all employees of any Acquired Company shall remain “at-will” after the Closing Date.

(b) Subject to Section 6.07(c), for purposes of vesting or eligibility to participate in each new or replacement employee benefit plan providing benefits (other than benefits under a defined pension plan) to any Employee after the Closing (the “**New Plans**”), the Employee shall receive full credit for his or her service with the applicable Acquired Company or any of their Affiliates (or predecessor employers) to the extent the applicable Acquired Company provides such past service credit under the analogous Acquired Company Benefit Plan before the Closing.

(c) For purposes of any New Plan that provides medical, dental, vision or other health care benefits, Buyer shall, or shall cause its Subsidiaries to, use commercially reasonable efforts to (i) waive all limitations as to preexisting conditions and exclusions with respect to participation and coverage requirements applicable to each Employee to the extent such conditions and exclusions were satisfied or did not apply to such Employee under the welfare plans of the applicable Acquired Company (or predecessor employers) prior to the Closing and (ii) provide each Employee with credit for any co-payments and deductibles paid and for out-of-pocket maximums incurred prior to the Closing in satisfying any analogous deductible or out-of-pocket requirements to the extent applicable under any such plan, in each case, during the year in which the Closing occurs.

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

Section 6.08. Payoff Letters; Payment of Debt. At least [REDACTED]
[REDACTED] Seller shall deliver to Buyer copies of Payoff Letters for the Indebtedness listed in Section 6.08 of the Applicable Companies Disclosure Letter.

Section 6.09. Consents. Seller shall, and shall cause the Acquired Companies to, use commercially reasonable efforts to cooperate with one another in timely seeking all necessary or appropriate consents, Permits, authorizations or approvals in connection with the Transactions, to the extent applicable, including, if and to the extent requested by Buyer, send notices, to be

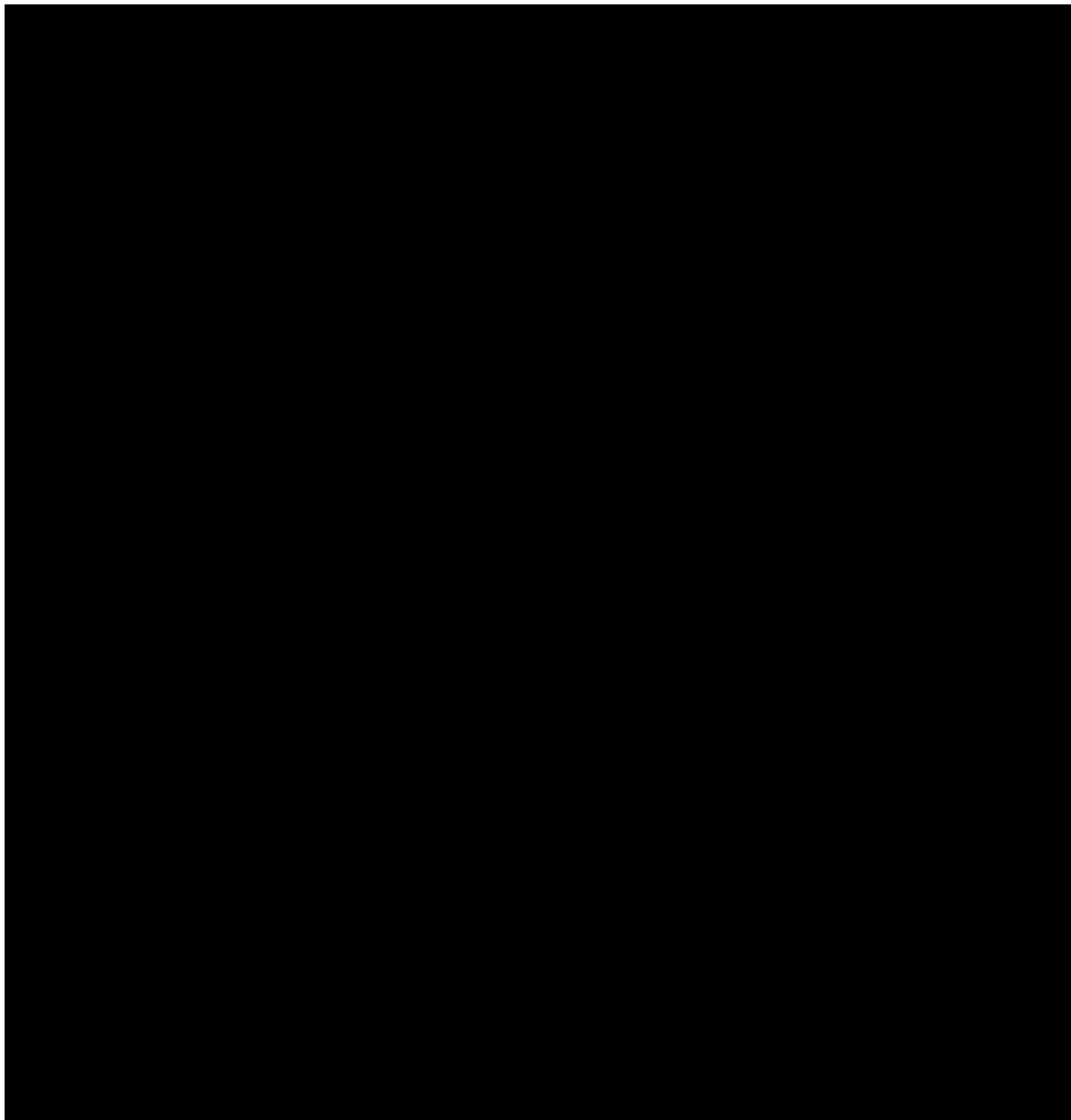
prepared and provided by Buyer seeking the consent or waiver of the counterparty to each agreement listed in Section 4.04 of the Applicable Companies Disclosure Letter.

Section 6.10. Exclusivity. From [REDACTED]

[REDACTED] Seller and the Applicable Companies shall not, and shall cause their respective Affiliates and their respective Representatives not to, directly or indirectly, through any Representative or otherwise, (a) solicit, engage in, facilitate or encourage any inquiries, discussions or proposals, (b) continue, propose or enter into negotiations or discussions, (c) provide non-public information relating to or in connection or (d) to authorize, recommend, propose or enter into any confidentiality agreement, term sheet, letter of intent, purchase agreement or other agreement, arrangement or understanding, in each case regarding or with respect to an Alternative Transaction. Seller and the Applicable Companies shall (and shall cause each of their respective Affiliates and their respective Representatives to) immediately cease and terminate any activities, discussions or negotiations with any Person other than Buyer (and its Affiliates and Representatives) that are ongoing with respect to any Alternative Transaction and shall request the return or destruction of any confidential information shared in connection with such discussions or negotiations, and terminate access to the Data Room (or any other data room) by any Person and their Representatives (other than Buyer or an Affiliate of Buyer and their respective Representatives). Seller agrees that in the event any Person expresses an interest in acquiring or investing in the Applicable Companies prior to Closing, whether directly or through an intermediary, Seller shall inform the Buyer of the terms of such inquiry promptly and will provide all relevant details, including any correspondence or documentation in respect of such interest.

Section 6.11. [REDACTED]

[REDACTED]



Section 6.12. Mutual Release.

(a) Effective [REDACTED]

[REDACTED] Seller, on behalf of itself and the other Seller Released Parties (as defined below), and their respective successors and permitted assigns (collectively, the “**Seller Releasing Parties**”), hereby irrevocably and unconditionally releases, waives, and forever discharges the Acquired Companies and any present and former, direct and indirect, incorporator, member, partner, stockholder, Affiliate, other Representative, successor or permitted assign of any of the foregoing (collectively, the “**Company Released Parties**”) of and from any and all Actions,

causes of action, executions, judgments, disputes, duties, debts, demands, dues, Losses, accounts, bonds, Contracts and covenants (whether express or implied), and claims and demands whatsoever whether in Law or in equity (whether based upon Contract, tort, strict liability, Law or otherwise) (collectively, “**Claims**”), that each of Seller Releasing Parties may have against any of the Company Released Parties, now or in the future, in each case in respect of any cause, matter or thing occurring or arising on or prior to the Closing Date.

(b) Effective [REDACTED]

[REDACTED] Buyer, on behalf of each Acquired Company, the other Company Released Parties, and their respective successors and permitted assigns (collectively, the “**Company Releasing Parties**” and together with Seller Releasing Parties, the “**Releasing Parties**”), hereby irrevocably and unconditionally releases, waives, and forever discharges Seller and its respective Affiliates and any present and former, direct and indirect, incorporator, member, partner, stockholder, Affiliate, other Representative, successor or permitted assign of any of the foregoing (the “**Seller Released Parties**”) of and from any and all Claims that any of the Company Releasing Parties may have against each of Seller Released Parties, now or in the future, in each case, in respect of any cause, matter or thing occurring or arising on or prior to the Closing Date.

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

Section 6.13. Pre-Closing Restructuring. Prior to the Closing, Seller shall take the following actions (collectively, the “**Pre-Closing Restructuring**”):

(a) Seller shall form VVRC LLC by filing the Certificate of Formation with the Secretary of State of the state of Delaware in the form attached hereto in Exhibit D-1 with the Limited Liability Company Agreement governing VVRC LLC attached hereto in Exhibit D-2.

(b) Seller shall form CKIN LLC by filing the Certificate of Formation with the Secretary of State of the state of Delaware in the form attached hereto in Exhibit E-1 with the Limited Liability Company Agreement governing CKIN LLC attached hereto in Exhibit E-2.

(c) Seller shall form MB Equipment NewCo by filing the Certificate of Formation with the Secretary of State of the state of Delaware in the form attached hereto in Exhibit F-1 with the Limited Liability Company Agreement governing MB Equipment NewCo attached hereto in Exhibit F-2.

(d) Each of VVRC Inc. and CKIN Inc. shall transfer and assign all of the assets of VVRC Inc. and CKIN Inc., respectively, into VVRC LLC and CKIN LLC, as applicable, in each case, pursuant to the form of asset assignment agreement attached hereto in Exhibit G-1 and any other documents necessary or desirable to consummate the transfer of VVRC Inc.’s and CKIN Inc.’s respective assets to VVRC LLC and CKIN LLC.

(e) MB Equipment Seller shall contribute certain assets listed on Section 6.13(e) of the Applicable Companies Disclosure Letter or as otherwise mutually determined by Seller and Buyer (such assets, the “**Equipment NewCo Assets**”) to MB Equipment NewCo, pursuant to the form

of asset assignment agreement attached hereto in Exhibit G-2 any other documents necessary or desirable to consummate the transfer of MB Equipment Seller's Equipment NewCo Assets to MB Equipment NewCo.

(f) Each Predecessor Company shall have assigned or otherwise transferred all Applicable Companies IP Registrations and all Applicable Companies Intellectual Property owned or held by such Predecessor Company, or which is registered in such Predecessor Company's name, to its respective successor New Company, and all filings required to be made with any Governmental Authority to effectuate such assignment or transfer shall have been made.

Section 6.14. Erroneous Payments. In the event that, after the Closing, any party hereto or such party's Affiliate (the "**Erroneous Payee**") receives notice that another party hereto or such party's Affiliate (the "**Erroneous Payor**") has erroneously transferred to such Erroneous Payee any payment or amount (an "**Erroneous Payment**"), the Erroneous Payee shall remit, or cause to be remitted, such Erroneous Payment as soon as possible (but in any event, no later than [REDACTED] to the Erroneous Payor.

Section 6.15. RWI Policy. Following the Closing, Buyer shall not, and shall cause its Affiliates (including, after the Closing, the Acquired Companies) not to, amend, modify, or waive any of the waiver of subrogation provisions of the buy-side representations and warranties insurance policy to be issued by Liberty Surplus Insurance Corporation to Buyer with respect to this Agreement in a manner that would have an adverse impact on Seller, any of Seller's respective Affiliates or any past, present or future equity holder, director, manager, officer, employee or advisor of any of the foregoing.

ARTICLE 7

CONDITIONS TO CLOSING

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

(a) The STB Approval shall have been obtained and shall be in full force and effect, and neither the STB nor any other Governmental Authority shall have imposed any conditions or obligations on the Buyer or the Applicable Companies that would materially impair the operation of the business of the Acquired Companies, consistent with past practice.

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

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

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

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

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

(d) The Applicable Companies Fundamental Representations shall be true and correct in all respects at and as of the date hereof and as if made as of the Closing Date (other than such representations and warranties that refer specifically to an earlier date, which representations and warranties shall have been true and correct as of such earlier date);

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

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

(g) The consents or waivers set forth on Section 7.02 of the Applicable Companies Disclosure Letter have been obtained;

(h) Buyer shall have received written evidence, in form and substance satisfactory to Buyer, that the Pre-Closing Restructuring has been consummated in accordance with this Agreement; and

(i) Buyer shall have received a certificate signed by Seller to the effect that the conditions set forth in each of clauses (a) through (h) of this Section 7.02 have been fulfilled.

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

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

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

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

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

ARTICLE 8

NON-SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 8.01. No Survival. The parties hereto, each intending to modify any applicable statute of limitations, agree that (a) the representations and warranties in this Agreement and in any certificate delivered pursuant hereto shall terminate and be of no further force and effect [REDACTED] thereafter there shall be no Liability on the part of, nor shall any claim be made by, any party hereto or any of their respective Affiliates, and with respect to the Buyer, the Buyer Group, in respect thereof, and (b) [REDACTED] there shall be no Liability on the part of, nor shall any claim be made by, any party hereto or any of their respective Affiliates in respect of any covenant or agreement to be performed or to apply prior to the Closing. All covenants and agreements contained in this Agreement that contemplate performance thereof following the Closing or otherwise expressly by their terms survive the Closing will survive the Closing in accordance with their terms. Notwithstanding anything to the contrary contained in any provision of this Agreement, nothing in this Agreement shall limit (x) any party hereto from seeking to recover any damages with respect to a claim for Fraud or a willful breach of this Agreement, (y) any party hereto from seeking to specifically enforce, or seeking to recover any damages with respect to the breach of, any covenants to the extent such covenant by its terms contemplates performance after the Closing or (z) any party’s rights and remedies with respect to the adjustment to the Aggregate Purchase Price pursuant to Section 2.04.

ARTICLE 9

TERMINATION

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

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

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

(c) By Seller at any time prior to the Closing, if (i) Buyer is in breach of the representations, warranties or covenants made by it in this Agreement, (ii) such breach is not cured or capable of being cured by [REDACTED] and (iii) such breach, if not cured, would render the conditions set forth in Section 7.01 or Section 7.03 incapable of being satisfied; provided, however, that Seller shall not be entitled to terminate this Agreement pursuant to this Section 9.01(c) if any Seller has breached this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.02 to be satisfied;

(d) By Seller, on the one hand, or Buyer, on the other hand, if the Closing shall not have occurred by [REDACTED] (as it may be extended pursuant to this Section 9.01(d), the “**End Date**”); provided, however, that (i) Seller shall not be entitled to terminate this Agreement pursuant to this Section 9.01(d) if any Seller has breached this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.02 to be satisfied and (ii) Buyer shall not be entitled to terminate this Agreement pursuant to this Section 9.01(d) if Buyer has breached this Agreement and such breach has resulted in the failure of a condition in Section 7.01 or Section 7.03 to be satisfied; provided further, [REDACTED]

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

ARTICLE 10 MISCELLANEOUS

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

Gulf & Atlantic Railways, LLC
245 Riverside Ave, Suite 250
Jacksonville, FL 32202
Attn: Ryan Ratledge
E-mail: ryan.ratledge@garailways.com

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

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

and

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

if to Seller, to:

MB Rail IB, LLC
7450 W 130th Street, Suite 100
Overland Park, KS 66213
Attn: Ivory Beggs
E-mail: a.beggs@mbrail.com

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

Wallace Saunders
10111 West 87th Street
Overland Park, KS 66212
Attn: Thomas E. Hayes
E-mail: thayes@wallacesaunders.com

or such other address as such party may hereafter specify for the purpose of giving notice to the other parties hereto. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made (a) as of the date delivered, if delivered personally, (b) on the date the delivering party receives an affirmative confirmation (excluding automatic acknowledgement of receipt) during normal business hours from the party to whom notice was intended (or if such affirmative confirmation is not received on the day of delivery, the next Business Day), if delivered by email (or at such other email for a party as shall

be specified in a notice given in accordance with this Section 10.01), (c) three Business Days after being mailed by registered or certified mail (postage prepaid, return receipt requested) or (d) one Business Day after being sent by overnight courier (providing proof of delivery).

Section 10.02. Amendments and Waivers.

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

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

Section 10.03. Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party or its Affiliates incurring such cost or expense.

Section 10.04. Binding Effect; Benefit; Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as expressly set forth in Section 10.14, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or Liabilities hereunder upon any Person other than the parties hereto and their respective successors and permitted assigns. No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of Buyer and Seller, and any purported assignment, delegation or other transfer of such rights or obligations in violation of this provision shall be null and void *ab initio*; provided, however, that Buyer may assign its rights and obligations hereunder without the prior written consent of Seller or any other parties to any member of the Buyer Group.

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

Section 10.06. Mediation. This Agreement and any and all Claims regarding the rights and obligations of the parties under the terms of this Agreement (including, but not limited to, a breach of this Agreement), whether based upon Contract, tort or otherwise, shall be resolved in accordance with the following procedure. Either party may initiate a Claim by filing a demand in writing with the other party. Upon the filing of a demand, the parties shall attempt in good faith to resolve the Claim through negotiations. If the Claim is not resolved through negotiations [REDACTED], either party may give written notice to the other party

requesting that a Representative of Buyer's senior management and a Seller meet in an attempt to resolve the Claim. Each such Representative shall be identified in writing by the respective party (prior to such meeting), shall have full authority to resolve the Claim and shall meet at a mutually agreeable time and place within [REDACTED] and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the Claim. Any Claim between the parties or arising out of this Agreement that is not resolved pursuant to the foregoing may be brought in accordance with Section 10.07.

Section 10.07. Jurisdiction. The parties hereto agree that any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with or relating to, this Agreement or the Transactions (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates or any member of Buyer Group) shall be brought exclusively in the Delaware Chancery Court or, if such court shall not exercise jurisdiction, any federal court located in the state of Delaware, or if such court shall not exercise jurisdiction, the Superior Court of the State of Delaware, so long as one of such courts shall have subject matter jurisdiction over such Action, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, Action or proceeding in any such court or that any such Action brought in any such court has been brought in an inconvenient forum. Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 10.01 shall be deemed effective service of process on such party.

Section 10.08. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.09. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by each other party hereto. Until and unless each party has received a counterpart hereof signed by each other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 10.10. Entire Agreement. This Agreement, the Exhibits and Schedules hereto and, subject to Section 6.05(b), the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject-matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject-matter hereof and thereof.

Section 10.11. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions

of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the Transactions be consummated as originally contemplated to the fullest extent possible.

Section 10.12. Disclosure Letters. The parties hereto agree that any reference in a particular Section of either the Applicable Companies Disclosure Letter or the Buyer Disclosure Letter shall be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the relevant party that are contained in the corresponding Section of this Agreement and (b) any other representations and warranties (or covenants, as applicable) of such party that are contained in this Agreement to the extent the applicability to such other Section is reasonably apparent on the face of such disclosure or where noted with applicable cross-references. The inclusion of any information in the Applicable Companies Disclosure Letter or the Buyer Disclosure Letter, as applicable, shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a Material Adverse Effect or is outside the Ordinary Course. The information set forth in the Applicable Companies Disclosure Letter or the Buyer Disclosure Letter is disclosed solely for the purposes of this Agreement, and no information set forth therein shall be deemed to be an admission by any party hereto of any matter whatsoever, including any violation of Law or breach of any Contract. The Applicable Companies Disclosure Letter and the Buyer Disclosure Letter and the information and disclosures contained therein are intended only to qualify and limit the representations, warranties and covenants contained in this Agreement. Nothing in the Applicable Companies Disclosure Letter or the Buyer Disclosure Letter shall be deemed to broaden the scope of any representation or warranty contained in this Agreement or create any representation, warranty or covenant.

Section 10.13. Specific Performance. The parties hereto agree that irreparable harm, for which monetary damages (even if available) would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the Transactions) were not performed in accordance with their specified terms or in the event of any actual or threatened breach of this Agreement. Accordingly, the parties acknowledge and agree that, except where this Agreement is validly terminated in accordance with Article 9, the parties, on behalf of themselves and the third party beneficiaries of this Agreement provided in Section 10.14, shall be entitled to seek an injunction, specific performance or other equitable relief to prevent and/or remedy a breach or threatened breach of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which a party is entitled at Law or in equity. Any party seeking an injunction or injunctions to prevent a breach or breaches of this Agreement or to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with the request for or grant of any such order or injunction. Each party agrees not to assert that a remedy of specific performance is unenforceable, invalid, contrary to Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy.

Section 10.14. No Recourse Against Non-Parties. Notwithstanding anything that may be expressed or implied in this Agreement, all claims or causes of action (whether in Contract or in tort, in Law or in equity) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement or the Transactions may be made only against the entities that are expressly identified as parties hereto. No Person who is not a named party to this Agreement, including any past, present or future director, officer, incorporator, member, manager, partner, direct or indirect equityholder, Affiliate, agent, employee, attorney or other Representative of any named party to this Agreement or any Affiliate of the foregoing, including any member of Buyer Group (“**Non-Party Affiliates**”) shall have any Liability (whether in Contract or in tort, in law or in equity, or based upon any theory that seeks to impose Liability on an entity party against its owners or Affiliates) for any obligations or Liabilities arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation or execution, and each party hereto waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third party beneficiaries of this Section 10.14.

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

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

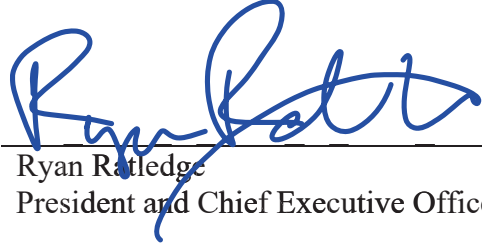
BUYER:

GULF & ATLANTIC RAILWAYS, LLC

By:

Name: Ryan Ratledge

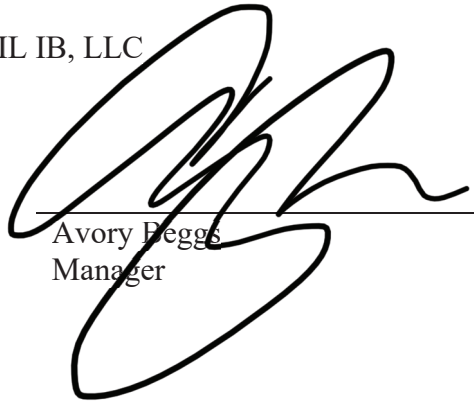
Title: President and Chief Executive Officer



SELLER:

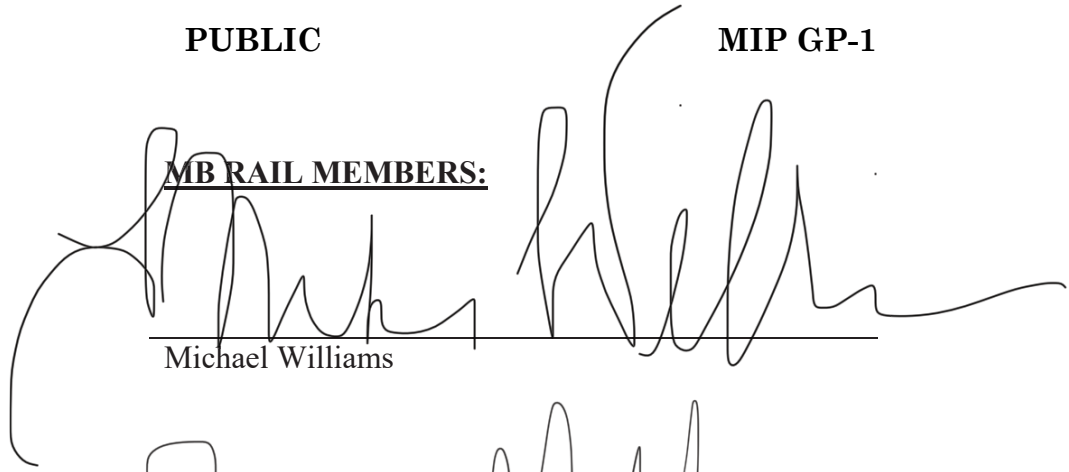
MB RAIL IB, LLC

By:

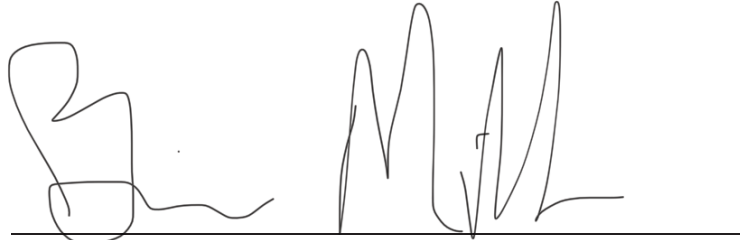
Name:  _____
Avory Beggs

Title: Manager

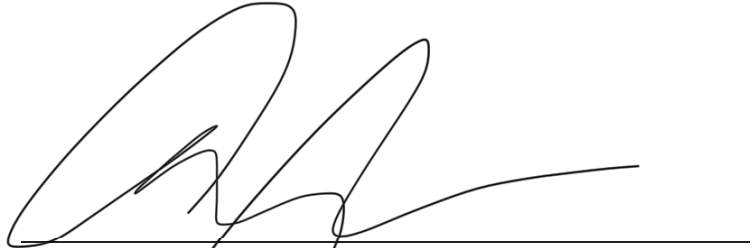
MB RAIL MEMBERS:



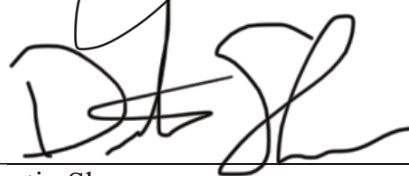
Michael Williams



Brian Miller



Ivory Beggs



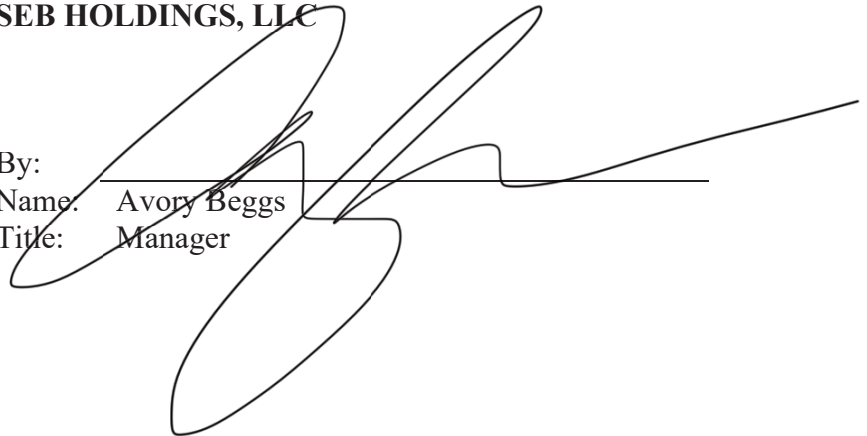
Dustin Shaver

SEB HOLDINGS, LLC

By:

Name: Ivory Beggs

Title: Manager



4M PROPERTIES, LLC

By:

Name: Brian Miller

Title: Manager

Tammy Williams

Jerry Darnaby

SCHEDULE I

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Schedule I

SCHEDULE II**Acquired Companies**

Acquired Company Name	Jurisdiction of Organization	Previous Name(s)
Camp Chase Rail, LLC	Kansas	None.
Chesapeake and Indiana Railroad Company, LLC	Delaware	None.
MB Rail IB Equipment NewCo, LLC	Delaware	None.
Vermilion Valley Railroad Company, LLC	Delaware	None.

Schedule II

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Verified Notice of Exemption to be served by first class mail, postage pre-paid, this 22nd day of March, 2023, on

Secretary of the United States
Department of Transportation
Federal Railroad Administration
Office of Chief Counsel
1200 New Jersey Avenue, SE
Washington, DC 20590

Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Federal Trade Commission
Office of General Counsel
600 Pennsylvania Avenue, NW
Washington, DC 20580

Jay Robert Pritzker
Office of the Governor
401 S. Spring Street
Springfield, IL 62704

Illinois Department of Transportation
Office of Chief Counsel
2300 S. Dirksen Parkway
Springfield, IL 62764

Illinois Commerce Commission
Office of General Counsel
160 N. LaSalle Street, Ste. C-800
Chicago, IL 60601-3104

Eric Holcomb
Office of the Governor
Statehouse
Indianapolis, IN 46204

Indiana Department of Transportation
Legal
100 N. Senate Avenue, IGCN 730
Indianapolis, IN 46204

Indiana Utility Regulatory
Commission
General Counsel
101 W. Washington Street, Ste. 1500E
Indianapolis, IN 46204

Mike DeWine
Office of the Governor
Riffe Center, 30th floor
77 S. High Street
Columbus, OH 43215

Ohio Department of Transportation
Chief Legal Counsel
1980 W. Broad Street
Columbus, OH 43223

Public Utilities Commission of Ohio
Docketing
180 E. Broad Street
Columbus, OH 43215

/s/ Matthew B. Cahill
Matthew B. Cahill