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May 27, 2014

Office of Proceedings

May 27, 2014

Part of

Public Record

Karl Morell  
Of Counsel

kmorell@balljanik.com

BY HAND DELIVERY

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



Re: Finance Docket No. 35829, Patrick D. Broe and Sand Springs Holdings, LLC -- Acquisition of Control Exemption – Sand Springs Railway Company

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(2), and a check covering the \$1,400 filing fee.

Please time and date stamp the extra copy of the Verified Notice of Exemption and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell  
Of Counsel

FEE RECEIVED

May 27, 2014

SURFACE

TRANSPORTATION BOARD

Enclosure

FILED

May 27, 2014

SURFACE

TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35829

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PATRICK D. BROE AND SAND SPRINGS HOLDINGS, LLC  
--ACQUISITION OF CONTROL EXEMPTION--  
SAND SPRINGS RAILWAY COMPANY

---

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(2)

---



KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorney for APPLICANTS

Dated: May 27, 2014

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35829

---

PATRICK D. BROE AND SAND SPRINGS HOLDINGS, LLC  
--ACQUISITION OF CONTROL EXEMPTION--  
SANDY SPRINGS RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1180.2(d)(2)

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Patrick D. Broe (“Mr. Broe”) and Sand Springs Holdings, LLC (“Holdings”) (collectively “Applicants”) file this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(2), for Mr. Broe and Holdings to control Sand Springs Railway Company (“Sand Springs”), a Class III railroad. In support of this Notice of Exemption, the following information as required by 49 C.F.R. § 1180.4(g) is submitted:

**Section 1180.6(a)**

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

Mr. Broe is a non-carrier individual who directly controls Holdings, a non-carrier company. Sheffield Steel Corporation is a non-carrier that currently controls Sand Springs. Holdings will acquire all of the stock of Sand Springs. Once that transaction is consummated, Mr. Broe and Holdings will control Sand Springs.

Mr. Broe also directly controls OmniTRAX, Inc. ("OmniTRAX"), a non-carrier company that currently controls the following twelve (12) Class III railroads operating in eight (8) States: Chicago Rail Link, LLC ("CRL"), Georgia Woodlands Railroad, LLC ("GWRC"), Great Western Railway of Colorado, LLC ("GWR"), Manufacturers' Junction Railway, LLC ("MJ"), Newburgh & South Shore Railroad, LLC ("NSR"), Northern Ohio & Western Railway, LLC ("NOW"), Panhandle Northern Railroad, LLC ("PNR"), Alliance Terminal Railroad, LLC ("ATR"), Fulton County Railway, LLC ("FCR"), Alabama & Tennessee River Railway, LLC ("ATN"), Kettle Falls International Railway, LLC ("KFR") and Stockton Terminal and Eastern Railroad ("STE").

In addition, Mr. Broe directly controls BNS Holding, Inc. ("BNS"), a non-carrier company which indirectly controls the following three (3) Class III railroads operating in six (6) States: Nebraska, Kansas and Colorado Railway, LLC ("NKCR"), Illinois Railway, LLC ("IR"), and Georgia & Florida Railway, LLC ("GFR").

The rail lines operated by CRL, GWRC, GWR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, STE, NKCR, IR and GFR do not connect with the rail lines operated by Sand Springs. The rail lines operated by Sand Springs are located in Oklahoma. None of the railroads controlled by OmniTRAX or BNS operates a rail line in Oklahoma.

Also, the involved transaction is not part of a series of anticipated transactions that would connect the rail lines operated by Sand Springs with any railroad in the OmniTRAX or BNS corporate family. Finally, Sand Springs is not a Class I rail carrier nor are any of the carriers controlled by OmniTRAX and BNS. Accordingly, this transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2), and exempt from prior approval by the Surface Transportation Board ("Board").

**The name and business address of Applicants are as follows:**

Patrick D. Broe  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

Sand Springs Holdings, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

OmniTRAX, Inc.  
252 Clayton Street  
Fourth Floor  
Denver, CO 80206

Sand Springs Railway Company  
1650 S 81<sup>st</sup> W Avenue  
Tulsa, OK 74127

Stockton Terminal & Eastern Railroad Company  
1330 N. Broadway Avenue  
Stockton, CA 95205

Nebraska, Kansas & Colorado Railway, LLC  
128 1<sup>st</sup> Street  
Grant, NE 69140

Kettle Falls International Railway, LLC  
125 East Meyers Street  
Kettle Falls, WA 99141

Alabama & Tennessee River Railway, LLC  
3425 Forrest Avenue  
Gadsden, AL 35904

Fulton County Railway, LLC  
600 Wilson Mill Road SW  
Atlanta, GA 30331  
Denver, CO 80209

Alliance Terminal Railroad, LLC  
1111 Intermodal Parkway  
Haslet, Texas 76052

Chicago Rail Link, LLC  
2728 E. 104<sup>th</sup> Street  
Chicago, IL 60617

Georgia Woodlands Railroad, LLC  
210 Depot Street  
Washington, GA 30673

Great Western Railway of Colorado, LLC  
950 Taylor Avenue  
Loveland, CO 80539

Manufacturers' Junction Railway, LLC  
2335 S. Cicero Avenue  
Cicero, IL 60804

Newburgh & South Shore Railroad LLC  
4200 East 71<sup>st</sup> Street  
Marcelline Yard, OH 44105

Northern Ohio & Western Railway, LLC  
525 Wall Street  
Tiffin, OH 44883

Panhandle Northern Railroad, LLC  
100 East Grand  
Borger, TX 79007

Illinois Railway, LLC  
430 West Madison Street  
Ottawa, IL 61350

Georgia & Florida Railway, LLC  
1019 Coastline Avenue  
Albany, GA 31705

**Applicants' representative:**

Karl Morell  
Of Counsel  
Ball Janik LLP  
655 Fifteenth Street, N.W.  
Suite 225  
Washington, D.C. 20005

(202) 638-3307

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

Applicants intend to consummate this transaction on or shortly after the effective date of this Notice of Exemption.

**(iii) The purpose sought to be accomplished by the proposed transaction.**

Applicants intend to acquire Sand Springs as an investment in order to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by, and financial viability of, the sixteen (16) railroads.

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

CRL's lines are located in Illinois.

GWRC's line is located in Georgia.

GWR's lines are located in Colorado.

MJ's lines are located in Illinois.

NSR's lines are located in Ohio.

NOW's line is located in Ohio.

PNR's line is located in Texas.

ATR's lines are located in Texas.

FCR's lines are located in Georgia.

ATN's lines are located in Alabama.

KFR's lines are located in Washington

IR's lines are located in Illinois.

GFR's lines are located in Georgia and Florida.

NKCR's lines are located in Nebraska, Kansas and Colorado.

STE's lines are located in California.

Sand Springs lines are located in Oklahoma.

**(6) Map.**

Maps illustrating the rail lines of CRL, GWRC, GWR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, IR, GFR, NKCR, STE and Sand Springs are attached as Exhibit 1.

**(7)(ii) Agreement.**

The redacted version of the Stock Purchase Agreement is attached as Exhibit 2.

Unredacted copies of the Stock Purchase Agreement are being filed under seal pursuant to the accompanying Motion for Protective Order.

Because CRL, GWRC, GWR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, IR, G&FR, NKCR, STE and Sand Springs are Class III carriers, no labor protection may be imposed on this transaction pursuant to 49 U.S.C. § 11326(c).

**ENVIRONMENTAL AND HISTORIC IMPACTS**

Mr. Broe and Holdings will control Sand Springs for the purpose of continued rail operations where further Board approval is required to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

The indirect control of Sand Springs by Mr. Broe and Holdings will not result in significant changes in carrier operations. There will not be 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 these lines to motor carriage. This transaction will not 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. This transaction will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, this transaction does not contemplate the transportation of any ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

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

Respectfully submitted,



KARL MORELL  
Of Counsel  
BALL JANIK LLP  
655 Fifteenth Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

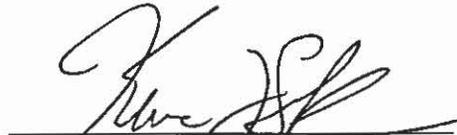
Attorney for APPLICANTS

Dated: May 27, 2014

VERIFICATION

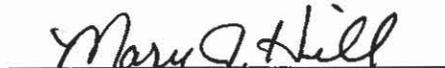
STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Kevin Shuba, being duly sworn depose and state that I am Manager of Sand Springs Holdings, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

  
Kevin Shuba

SUBSCRIBED AND SWORN TO before me this 23 day of May, 2014, in the City and County of Denver, State of Colorado.

My Commission Expires: 11/01/2016

  
Notary Public

MARY J. HILL  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20044039318  
MY COMMISSION EXPIRES NOVEMBER 1, 2016

# EXHIBIT 1



Canada

Kelley Falls International Railway

Stockton Terminal & Eastern Railroad

Great Western Railway of Colorado

Nebraska, Kansas & Colorado Railway

United States

Panhandle Northern Railway

Alabama & Tennessee River Railway

Alliance Terminal Railroad

Newburgh & South Shore Railroad

Chicago Rail-Link

Manufacturers' Junction Railway

Illinois Railway

Northern Ohio & Western Railway

Georgia Woodlands Railroad

Fulton County Railway

Georgia & Florida Railway

The Bahamas

Turks and Caicos Islands

Google

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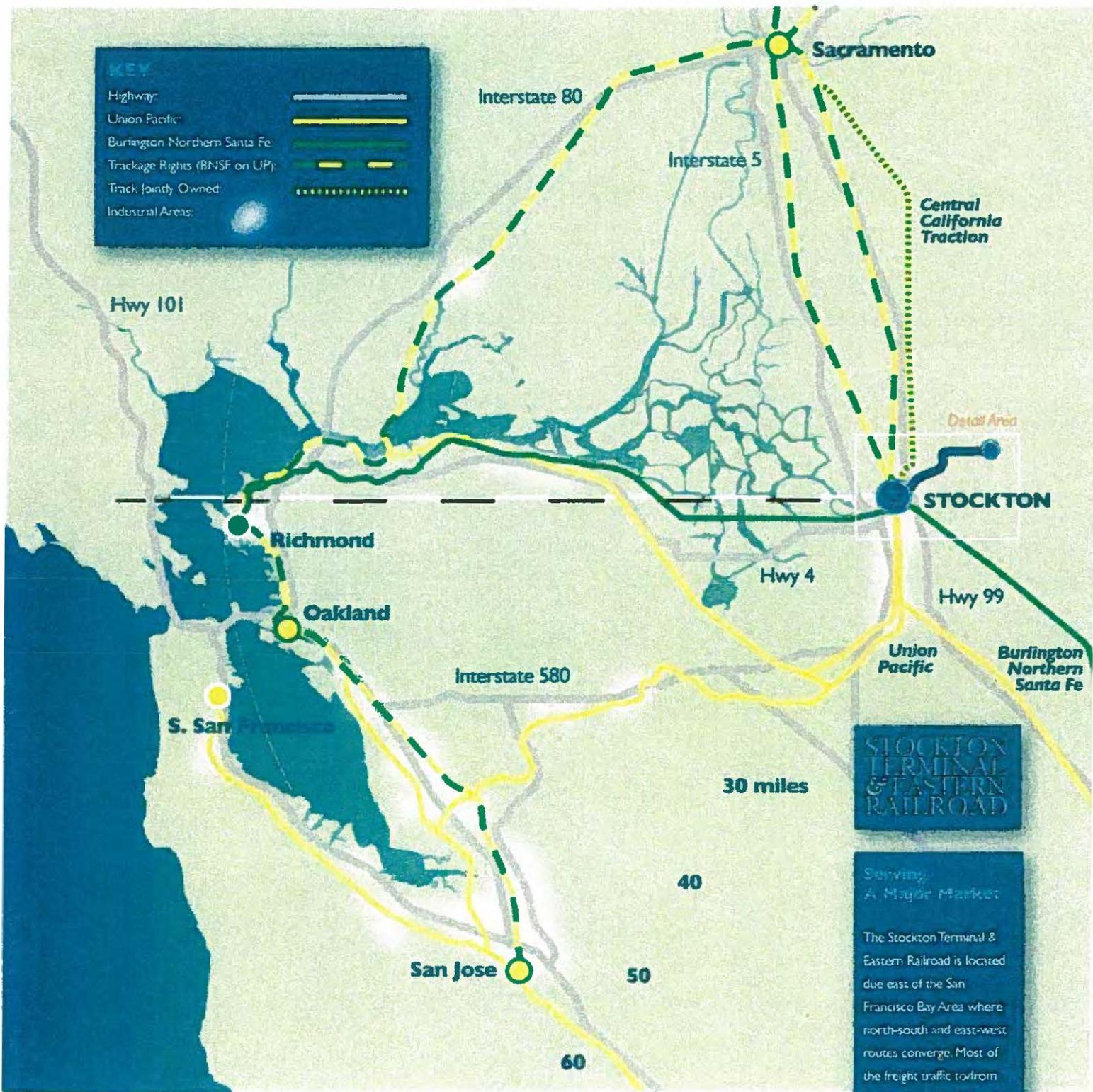
US Dept of State Geographer

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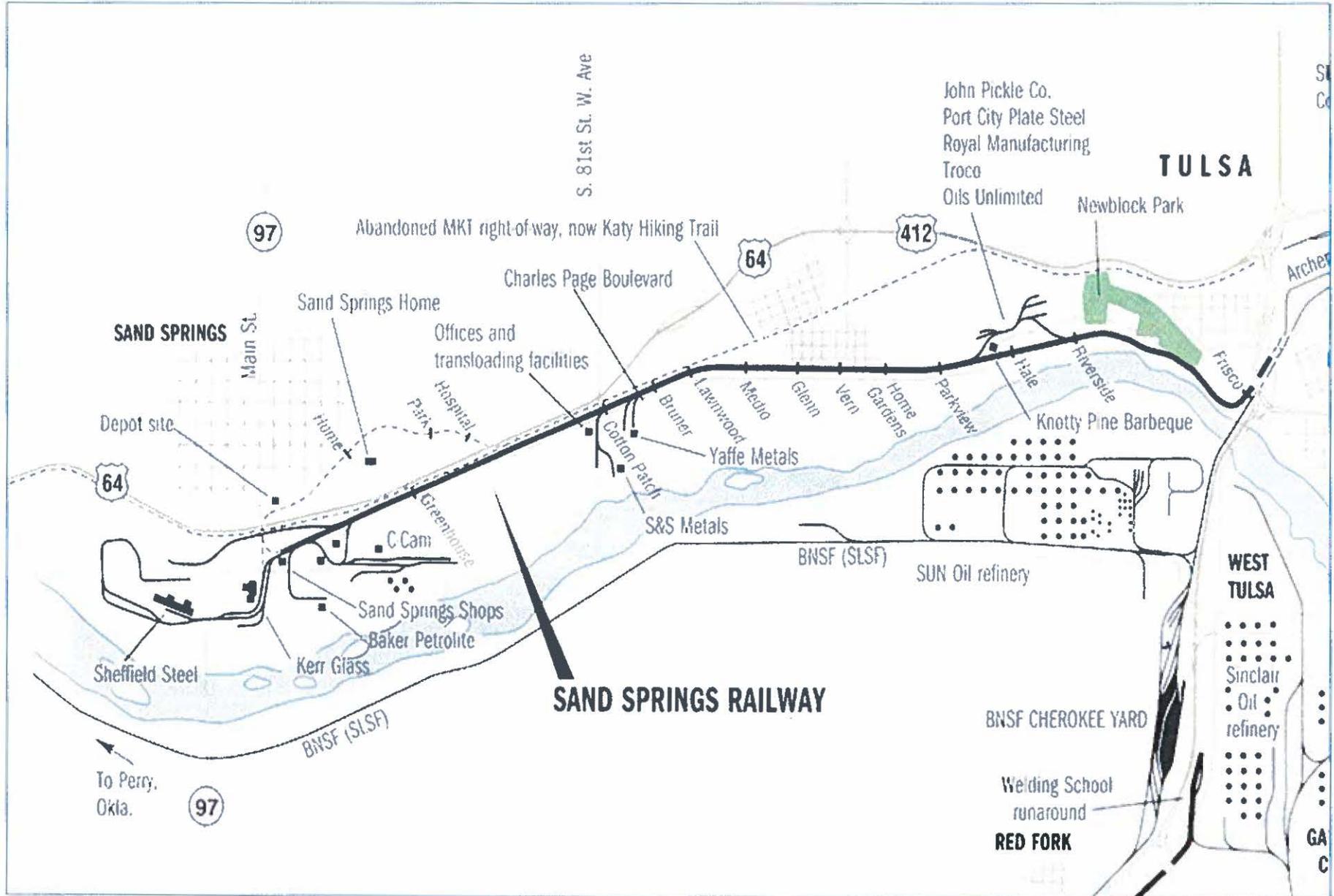
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40°37'15" 27" N 98°23'22" 51" W elev. 1739 ft

Eye alt 2625 17 mi



Position Relative to the San Francisco Bay Area



# EXHIBIT 2

**STOCK PURCHASE AGREEMENT**

between

**SHEFFIELD STEEL CORPORATION**

and

**SAND SPRINGS HOLDINGS, LLC**

dated as of

May 23, 2014

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## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this “**Agreement**”), dated as of May 23, 2014 is entered into between SHEFFIELD STEEL CORPORATION, a Delaware corporation (“**Seller**”) and SAND SPRINGS HOLDINGS, LLC, a Colorado corporation (“**Buyer**”), and, solely for the purposes of **Section 7.8, [Redacted]** .

### RECITALS

WHEREAS, Seller owns all of the issued and outstanding shares of common stock, par value \$1.00 per share (the “**Shares**”), of Sand Springs Railway Company, an Oklahoma corporation (the “**Company**”);

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Shares, subject to the terms and conditions set forth herein; and

WHEREAS, **[Redacted]** ;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Acceptance Notice**” has the meaning set forth in Error! Reference source not found..

“**Accounting Referee**” has the meaning set forth in **Section 2.2(d)**.

“**Adjustment Payment**” has the meaning set forth in **Section 2.2(d)**.

“**Agreement**” has the meaning set forth in the preamble.

“**Balance Sheet**” has the meaning set forth in **Section 3.6**.

“**Balance Sheet Date**” has the meaning set forth in **Section 3.6**.

“**Base Purchase Price**” has the meaning set forth in **Section 2.2(a)**.

**“Benefit Plan”** has the meaning set forth in **Section 3.16(a)**.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in Atlanta, Georgia are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the preamble.

**“Buyer Benefit Plans”** has the meaning set forth in **Section 5.5(a)**.

**“Closing”** has the meaning set forth in **Section 2.4**.

**“Closing Date”** has the meaning set forth in **Section 2.4**.

**“Closing Payment”** has the meaning set forth in **Section 2.2(c)**.

**“Closing Statement”** has the meaning set forth in **Section 2.2(d)**.

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

**“Common Stock”** has the meaning set forth in **Section 3.3(a)**.

**“Company”** has the meaning set forth in the recitals.

**“Company Continuing Employee”** has the meaning set forth in **Section 5.5(a)**.

**“Company Intellectual Property”** has the meaning set forth in **Section 3.10(b)**.

**“Confidentiality Agreement”** means the Confidentiality Agreement, dated as of July 17, 2013, between Buyer and Gerdau Ameristeel US Inc., a Florida corporation and the sole shareholder of Seller.

**“Current Assets”** means (a) Accounts Receivable-Trade and Accounts Receivable-Other, in each case not more than ninety (90) days past due; (b) Raw Materials; and (c) Prepaids (other than insurance premiums).

**“Current Liabilities”** means Accounts Payable-Trade and Accrued Liabilities.

**“Deductible”** has the meaning set forth in **Section 7.4(a)**.

**“Deposit Amount”** has the meaning set forth in **Section 2.2(b)**.

**“Direct Claim”** has the meaning set forth in **Section 7.5(c)**.

**“Disclosure Schedules”** means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

**“Dollars or \$”** means the lawful currency of the United States.

**“Effective Time”** has the meaning set forth in **Section 2.4**.

**“Employees”** means those Persons employed by the Company immediately prior to the Closing.

**“Encumbrance”** means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

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

**“Environmental Law”** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**“Environmental Notice”** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

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

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

**“Financial Statements”** has the meaning set forth in **Section 3.6**.

**“[Redacted]”** .

**“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, court or tribunal of competent jurisdiction.

**“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, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

**“Indemnified Party”** has the meaning set forth in **Section 7.4**.

**“Indemnifying Party”** has the meaning set forth in **Section 7.4**.

**“Insurance Policies”** has the meaning set forth in **Section 3.11**.

**“Intellectual Property”** has the meaning set forth in **Section 3.10(a)**.

**“Interim Balance Sheet”** has the meaning set forth in **Section 3.6**.

**“Knowledge of Seller or Seller’s Knowledge”** or any other similar knowledge qualification, means the actual knowledge of Jeff Foster, Christopher Westrick or Tim Malkiewicz after reasonable inquiry.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Lease Agreement”** has the meaning set forth in **Section 6.2(f)**.

**“Leases”** has the meaning set forth in **Section 3.9(b)**.

**“Losses”** means actual out-of-pocket losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is materially adverse to (a) the business, results of operations, financial condition or assets of the

Company, or (b) the ability of Seller to consummate the transactions contemplated hereby; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any changes, conditions or effects in the United States economy or securities or financial markets in general; (ii) changes, conditions or effects that affect the industry in which the Company operates; (iii) any change, effect or circumstance resulting from an action required or permitted by this Agreement; (iv) the effect of any changes in applicable Laws or accounting rules; (v) any change, effect or circumstance resulting from the announcement of this Agreement; or (vi) conditions caused by acts of terrorism or war (whether or not declared) or any natural or man-made disaster or other acts of God.

“**Material Contracts**” has the meaning set forth in **Section 3.8(a)**.

“**Net Working Capital**” means an amount equal to Current Assets, minus Current Liabilities.

“**Objection**” has the meaning set forth in **Section 2.2(d)**.

“**Offered Parcel**” has the meaning set forth in Error! Reference source not found..

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

“**Permitted Encumbrances**” has the meaning set forth in **Section 3.9(a)**.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Preliminary Purchase Price**” has the meaning set forth in **Section 2.2(c)**.

“**Proceedings**” has the meaning set forth in **Section 3.12(a)**.

“**Purchase Price**” has the meaning set forth in **Section 2.2**.

“**Qualified Benefit Plan**” has the meaning set forth in **Section 3.16(b)**.

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

“**Related Party**” has the meaning set forth in **Section 2.2(a)**.

“**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 environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Right of First Offer Notice**” has the meaning set forth in Error! Reference source not found..

“**Schedule Supplement**” has the meaning set forth in **Section 5.3**.

“**Securities Act**” means the Securities Act of 1933.

“**Seller**” has the meaning set forth in the preamble.

“**Shares**” has the meaning set forth in the recitals.

“**Stub Period**” has the meaning set forth in **Section 5.9**.

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

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

“**Third-Party Claim**” has the meaning set forth in **Section 7.5(a)**.

## **ARTICLE II PURCHASE AND SALE**

**Section 2.1 Purchase and Sale.** Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Shares for the consideration specified in **Section 2.2**.

### **Section 2.2 Purchase Price; Deposit Amount.**

(a) The aggregate purchase price (the “**Purchase Price**”) for the Shares shall be [Redacted] (the “**Base Purchase Price**”), adjusted as follows:

(i) The Base Purchase Price will be decreased by the amount, if any, by which the Net Working Capital as of the Effective Time is less than [Redacted] which is the amount of Net Working Capital as of March 31, 2014. The Base Purchase Price will be increased by the amount, if any, by which the Net Working Capital as of the Effective Time is more than [Redacted] . In calculating the Net Working Capital, the Current Assets and Current Liabilities will be determined on an accrual basis in accordance with International Financial

Reporting Standards. Without limiting the foregoing, all unused vacation, personal leave and sick days will be included in Current Liabilities.

(ii) The Purchase Price is based on (A) the Company not having any long term liabilities, including capital leases, as of the Effective Time; and (ii) no related party transactions involving the Company remaining in place as of the Effective Time. Consequently, all long term liabilities, including capital leases, will be paid in full by Seller no later than Closing and all transactions between the Company and any Related Party (e.g., accounts or notes payable or receivable) will be eliminated by Seller as of the Effective Time, so that neither Current Assets nor Current Liabilities will include any amounts owed by or to any Related Party. “**Related Party**” means Seller, any direct or indirect owner of Seller, or any family member of any direct or indirect owner of Seller.

(b) Prior to the date of this Agreement, Buyer has deposited with Seller an amount equal to [Redacted] (the “**Deposit Amount**”) as evidence of Buyer’s good faith intent to perform its obligations under this Agreement. The parties hereby acknowledge and agree that if the Closing does not occur for any reason other than Buyer’s breach of its obligation to complete the Closing pursuant to the terms of this Agreement, the Deposit Amount shall be returned to Buyer. If the Closing occurs pursuant to this Agreement, the Deposit Amount shall be retained by Seller in partial satisfaction of the Purchase Price.

(c) No later than the day prior to the Closing Date, Seller and Buyer will agree to an estimated Purchase Price (the “**Preliminary Purchase Price**”) based on the most recent information available in the books and records of the Company, and in a manner consistent with the calculation of Net Working Capital as of March 31, 2014 attached hereto as **Exhibit A**. In the event that Buyer and Seller are unable to agree to an estimated Purchase Price prior to the Closing Date, the Preliminary Purchase Price shall be the Base Purchase Price. At Closing, Buyer will pay the Preliminary Purchase Price less the Deposit Amount to Seller by wire transfer (the “**Closing Payment**”) to an account designated by Seller.

(d) No later than ninety-five (95) days after the Closing Date, Buyer will cause to be prepared and delivered to Seller a statement (the “**Closing Statement**”) setting forth Buyer’s calculation of the Purchase Price (using the updated accruals of Current Assets and Current Liabilities as of the Effective Time) and showing the final adjustments to the Preliminary Purchase Price and the resulting amount, if any, (the “**Adjustment Payment**”) owed by Seller to Buyer or Buyer to Seller. In determining the Current Assets for purposes of the Closing Statement and the calculation of the Adjustment Payment, any accounts receivable as of the Effective Time that have not been collected within ninety (90) days after the Closing Date shall be excluded. To the extent that there are any accounts receivable that have not been collected within ninety (90) days after the Closing Date and that are excluded by Buyer from the calculation of the Current Assets, Buyer shall cause the Company to deliver, simultaneously with the Buyer’s delivery of the Closing Statement, an assignment with respect to such accounts receivable transferring such uncollected accounts receivable to Seller free and clear of all Encumbrances. The Buyer shall further cause the Company to grant to Seller an irrevocable power of attorney (coupled with an interest) to take such actions in the name of the Company to collect any and all such accounts for the benefit of Seller.

(i) If Seller disagrees with the Closing Statement, Seller may, within thirty (30) days after delivery thereof, deliver a written notice to Buyer specifying those items or amounts as to which the Seller disagrees, including appropriate documentation in support of Seller's position (an "**Objection**"). Seller will be deemed to have agreed with the Purchase Price set forth in the Closing Statement that are not specifically disputed in the Objection.

(ii) If the Objection is timely delivered, during the thirty (30) days following such delivery, Buyer and Seller will use their commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine Purchase Price. If, during such period, Buyer and Seller are unable to reach such agreement, they will promptly thereafter retain [insert name of accounting firm] (or any other nationally-recognized accounting firm mutually agreed upon by Buyer and Seller) (the "**Accounting Referee**") to promptly review this Agreement and the disputed items or amounts for the purpose of calculating the Purchase Price. In making any such calculation, the Accounting Referee will consider only those items or amounts in the Closing Statement as to which Seller has specifically disagreed in the Objection. Buyer and Seller will direct the Accounting Referee to use its best efforts to render its determination as promptly as practicable, but in no event later than thirty (30) days after being retained by Buyer and Seller and to deliver to Buyer and Seller a report setting forth its determination of the Purchase Price, including all supporting calculations. Such report and the Accounting Referee's determination of the Purchase Price will be conclusive, final and binding upon Buyer and Seller. The cost of the Accounting Referee's review and report will be shared equally by Buyer and Seller.

(e) The Adjustment Payment will be due from the applicable party no later than ten (10) days following the determination of the final adjustments to the Preliminary Purchase Price as set forth in Section 2.2(d). If Buyer owes the Adjustment Payment to Seller, Buyer will make the Adjustment Payment by wire transfer to an account designated by Seller. If Seller owes the Adjustment Payment to Buyer, Seller will make the Adjustment Payment by wire transfer to an account designated by Buyer.

### **Section 2.3 Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall:

(i) pay the Preliminary Purchase Price less the Deposit Amount as set forth in Section 2.2(c); and

(ii) deliver all other agreements, documents, instruments or certificates duly executed that are required to be delivered by Buyer at or prior to the Closing pursuant to **Section 6.3** of this Agreement.

(b) At the Closing, Seller shall deliver to Buyer:

(i) stock certificates evidencing the Shares, free and clear of all Encumbrances, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank;

(ii) all other agreements, documents, instruments or certificates duly executed that required to be delivered by Seller at or prior to the Closing pursuant to **Section 6.2** of this Agreement;

(iii) duly executed resignation letters addressed to the Company from each director and officer of the Company; and

(iv) all books, records and other property of the Company in the possession or control of Seller (although Seller may retain copies thereof for the preparation of tax returns, compliance with applicable laws, and other business purposes).

**Section 2.4 Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby shall take place at a closing (the “Closing”) at the offices of Smith, Gambrell & Russell, LLP, 1230 Peachtree St. NE, Suite 3100, Atlanta, Georgia 30309 (or remotely by electronic exchange of documents and signatures), or at such other place as may be agreed upon in writing by Buyer and Seller on a date specified by Buyer and Seller but no later than five (5) days after the satisfaction or waiver of the conditions to Closing set forth in **Article VI** have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date). The day on which the Closing actually takes place is referred to herein as the “Closing Date). The Closing will be effective as of 12:01 a.m. Central Daylight Time on the Closing Date (the “Effective Time”).

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this **Article III** are true and correct as of the date hereof and, subject to any Schedule Supplements made in accordance with **Section 5.3** hereof, as of Closing.

**Section 3.1 Organization and Authority of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware. Seller has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 3.2 Organization, Authority and Qualification of the Company.** The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of Oklahoma and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as

it is currently conducted. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary.

### **Section 3.3 Capitalization.**

(a) The authorized capital stock of the Company consists of 100,000 shares of common stock, par value \$1.00 per share (“**Common Stock**”), all of which are issued and outstanding and constitute the Shares. All of the Shares have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by Seller, free and clear of all Encumbrances.

(b) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating Seller or the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. There are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

**Section 3.4 No Subsidiaries.** The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

**Section 3.5 No Conflicts; Consents.** The execution, delivery and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Seller or the Company; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller or the Company; or (c) except as set forth in **Section 3.5** of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Material Contract. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller or the Company in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except for the consent and approval of the United States Surface Transportation Board and as otherwise set forth in **Section 3.5** of the Disclosure Schedules.

### **Section 3.6 Financial Statements.**

(a) Copies of the Company’s unaudited financial statements consisting of the balance sheet of the Company as at December 31 in each of the years 2012 and 2013 and the related statements of income and retained earnings, stockholders’ equity and cash flow for the years then ended and unaudited financial statements consisting of the balance sheet of the Company as at [March 31, 2014] and the related statements of income and retained earnings, stockholders’ equity and cash flow for the [three month] period then ended (collectively, the “**Financial Statements**”) are included in Section 3.6 of the Disclosure Schedules. The Financial Statements were prepared in accordance with International Financial Reporting Standards applied on a

consistent basis throughout the periods covered and fairly present, in all material respects, the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of March 31, 2014 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date.**”

(b) The Company has no known liabilities, whether absolute, accrued, contingent or otherwise, other than (i) liabilities shown on the Balance Sheet, and (ii) Current Liabilities incurred in the ordinary course of business since the Balance Sheet Date, all of which will be included in the calculation of the Purchase Price as set forth in **Section 2.2(a)**.

(c) All of the Company's accounts receivable resulted from bona fide transactions in the ordinary course of business with unrelated third parties.

**Section 3.7 Absence of Certain Changes, Events and Conditions.** Except as expressly contemplated by the Agreement or as set forth in Section 3.7 of the Disclosure Schedules, since the Balance Sheet Date the Company has operated in the ordinary course of business consistent with past practices in all material respects and there has not been, with respect to the Company, any:

(a) event, occurrence or development that has had a Material Adverse Effect, including, without limitation, (i) any damage, destruction or loss to any of the properties or assets of the Company, whether or not covered by insurance, that has materially and adversely affected or impaired (or which may materially and adversely affect or impair) the ability of the Company to conduct its business consistent with past practices; or (ii) any strikes, work stoppages or other labor trouble affecting the Company;

(b) amendment of the charter, by-laws or other organizational documents of the Company;

(c) split, combination or reclassification of any shares of its capital stock;

(d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;

(e) redemption, purchase or acquisition of its capital stock;

(f) change in any method of accounting or accounting practice of the Company, except as required by GAAP or applicable Law or as disclosed in the notes to the Financial Statements;

(g) incurrence, assumption or guarantee of any indebtedness for borrowed money, except unsecured current obligations and liabilities incurred in the ordinary course of business;

(h) sale or other disposition of any of the Company assets, including any Company assets shown or reflected on the Balance Sheet or acquired since the Balance Sheet Date, except in the ordinary course of business and except for any assets having an aggregate value of less

than \$10,000 that are not required for the operation of the Company's business in the ordinary course consistent with past practices or that have been replaced;

(i) increase in the compensation of its Employees, other than as provided for in any written agreements, copies of which have been delivered to Buyer, or in the ordinary course of business;

(j) adoption, amendment or modification of any Benefit Plan;

(k) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(l) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law; or

(m) agreement to do any of the foregoing, or any action or omission that would result in any of the foregoing.

### **Section 3.8 Material Contracts.**

(a) **Section 3.8(a)** of the Disclosure Schedules lists each of the following contracts and other agreements of the Company (together with all Leases listed in **Section 3.9(b)** of the Disclosure Schedules, collectively, the "**Material Contracts**"): .

(i) each agreement of the Company involving aggregate consideration in excess of \$10,000 or requiring performance by any party more than one year from the date hereof, which, in each case, cannot be cancelled by the Company without penalty or without more than 60 days' notice;

(ii) all agreements that relate to the sale of any of the Company's assets, other than in the ordinary course of business, since January 1, 2011;

(iii) all agreements that relate to the acquisition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise), in each case involving amounts in excess of \$100,000;

(iv) except for agreements relating to trade payables, all agreements relating to indebtedness of the Company, in each case having an outstanding principal amount in excess of \$100,000;

(v) all guarantees by the Company of any indebtedness, contract, or other obligation of another Person;

(vi) all agreements between or among the Company on the one hand and Seller or any Affiliate of Seller (other than the Company) on the other hand;

(vii) all agreements imposing confidentiality, non-compete or non-solicitation restrictions on the Company; and

(viii) all collective bargaining agreements or agreements with any labor organization, union or association to which the Company is a party.

(b) Except as set forth on **Section 3.8(b)** of the Disclosure Schedules, the Company is not in breach of, or default under, any Material Contract and no event has occurred that, with the passage of time or upon giving of notice, would constitute a default by the Company under any Material Contract, except for such breaches or defaults that would not have a Material Adverse Effect. Except as set forth on **Section 3.8(b)** of the Disclosure Schedules, to Seller's Knowledge, there are no defaults by the other party to any Material Contract and no event has occurred that, with the passage of time or upon giving of notice, would constitute a default by the other party to the Material Contract.

(c) To Sellers' Knowledge, except as noted in **Section 3.8(a)** of the Disclosure Schedules, the copies of the Material Contracts provided to Buyer by Seller are completed and correct, and include all amendments thereto.

### **Section 3.9 Title to Assets; Real Property.**

(a) The Company has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, or valid easements and rights of way to use in the manner used by the Company, all Real Property and tangible personal property and other assets reflected in the Financial Statements, used in the operation of the Company's business, or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business since the Balance Sheet Date that are not required for the operation of the Company's business in the ordinary course consistent with past practices or that has been replaced. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) those items set forth in **Section 3.9(a)** of the Disclosure Schedules;

(ii) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures, all of which are accrued on the Balance Sheet or became due and payable subsequent to the Balance Sheet Date and will be accrued on the Closing Statement as a Current Liability;

(iii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business relating to amounts that are not yet due and payable and which are accrued on the Balance Sheet or were incurred subsequent to the Balance Sheet Date and will be accrued on the Closing Statement as a Current Liability;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property, none of which affect the railroad operations of the Company as historically conducted;

(v) 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 of business, all of which are accrued on the Balance Sheet as a Current Liability; or

(vi) other imperfections of title or non-monetary Encumbrances, if any, that have not had, and would not have, a Material Adverse Effect.

(b) **Section 3.9(b)** of the Disclosure Schedules lists: (i) the street address of each parcel of owned Real Property (not including easements, rights of way, or similar interest in real property held by the Company for the operation of its railroad track); and (ii) the street address of each parcel of leased Real Property (other than railroad track leases), and a list, as of the date of this Agreement, of all leases for each parcel of leased Real Property (collectively, “Leases”), including the identification of the lessee and lessor thereunder.

(c) The Company, by way of the agreements disclosed in **Section 3.9** of the Disclosure Schedule, the owned Real Property, leased Real Property, and other easements has as of the date hereof, and will have as of the Effective Time, sufficient rights over a contiguous right-of-way to conduct rail operations substantially in the same manner as the rail operations have been conducted historically by the Company.

### **Section 3.10 Intellectual Property.**

(a) “**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.

(b) **Section 3.10(b)** of the Disclosure Schedules lists all patents, patent applications, trademark registrations and pending applications for registration, copyright registrations and pending applications for registration and internet domain name registrations owned by the Company. Except as set forth in **Section 3.10(b)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, the Company owns or has the right to use all Intellectual Property necessary to conduct the business as currently conducted (the “**Company Intellectual Property**”).

(c) Except as set forth in **Section 3.10(c)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, to Seller’s Knowledge: (i) the Company Intellectual Property as currently licensed or used by the Company, and the Company’s conduct of its business as currently conducted, do not infringe, violate or misappropriate the Intellectual Property of any Person; and (ii) no Person is infringing, violating or misappropriating any Company Intellectual Property.

**Section 3.11 Insurance.** **Section 3.11** of the Disclosure Schedules sets forth a list, as of the date hereof, of all material insurance policies maintained by the Company or with respect to which the Company is a named insured or otherwise the beneficiary of coverage (collectively, the “**Insurance Policies**”), including the deductibles under each Insurance Policy. Such

Insurance Policies are in full force and effect on the date of this Agreement and all premiums due on such Insurance Policies have been paid. **Section 3.11** of the Disclosure Schedules also shows a claims history under insurance policies maintained by the Company since January 1, 2010.

**Section 3.12 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in **Section 3.12(a)** of the Disclosure Schedules, there are no actions, suits, claims, investigations or other legal proceedings (“**Proceedings**”) pending or, to Seller’s Knowledge, threatened against or by the Company affecting any of its properties or assets (or by or against Seller or any Affiliate thereof and relating to the Company). None of the Proceedings listed in **Section 3.12(a)** of the Disclosure Schedules, if adversely determined, would result in a liability of the Company that is not fully covered by insurance or for which the full self insured retainage has not been accrued as of the Balance Sheet Date or will not be accrued on the Closing Statement as a Current Liability.

(b) Except as set forth in **Section 3.12(b)** of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets that have not been paid, accrued on the Balance Sheet as a Current Liability, or that would have a Material Adverse Effect.

**Section 3.13 Operational Matters.**

(a) Except as disclosed in **Section 3.13(a)** of the Disclosure Schedule, no customer of the Company who made payments in excess of \$10,000 during calendar year 2013 has ceased doing business with the Company or has advised Seller or the Company that it contemplates ceasing business with the Company.

(b) **Section 3.13(b)** of the Disclosure Schedule lists, to Seller’s Knowledge:

(i) All citations, notices of violations or notices of investigation received by the Company subsequent to January 1, 2010 resulting in liability (or alleging liability if no final determination of liability has been made) to the Company;

(ii) All orders, consent orders, administrative or judicial enforcement proceedings from any Governmental Authority received by the Company since January 1, 2010 relating to safety or health matters involving the business or operations of the Company;

(iii) All slow orders currently in effect applicable to the Company; and

(iv) All accidents or incidents since January 1, 2011, that have or reasonably could result in a claim of liability against the Company, including any reportable injuries or derailments or damage to property.

**Section 3.14 Compliance With Laws; Permits.**

(a) Except as set forth in **Section 3.14(a)** of the Disclosure Schedules, the Company is in compliance with all Laws applicable to it or its business, properties or assets, except where the failure to be in compliance would not have a Material Adverse Effect.

(b) All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect, except where the failure to obtain such Permits would not have a Material Adverse Effect.

(c) None of the representations and warranties contained in **Section 3.14** shall be deemed to relate to environmental matters (which are governed by **Section 3.15**), employee benefits matters (which are governed by **Section 3.16**), employment matters (which are governed by **Section 3.17**) or tax matters (which are governed by **Section 3.18**).

### **Section 3.15 Environmental Matters.**

(a) Except as set forth in **Section 3.14(a)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, to Seller's Knowledge, the Company is in compliance with all Environmental Laws and has not, and the Seller has not, received from any Person any (i) Environmental Notice or Environmental Claim, 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.

(b) The Company has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in **Section 3.14(b)** of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company.

(c) Except as set forth in **Section 3.14(c)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, to Seller's Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Laws with respect to the business or assets of the Company or any Real Property currently owned, operated or leased by the Company, and neither the Company nor Seller has received an Environmental Notice that any Real Property currently owned, operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Laws or term of any Environmental Permit by, Seller or the Company.

(d) There are no underground storage tanks currently located on the Real Property and, to Seller's Knowledge, no underground storage tanks have ever been located on the Real Property.

(e) **Section 3.15(e)** of the Disclosure Schedule lists all environmental reports, audits or inspections that have been conducted by (or at the request of) Seller, the Company, or any Governmental Authority with respect to any aspect of the business or operations of the Company during the immediately preceding five (5) year period. True, correct and complete copies of all of the reports, audits and inspections listed in **Section 3.15(e)** of the Disclosure Schedule have been provided to Buyer.

(f) The representations and warranties set forth in this **Section 3.15** are the Seller's sole and exclusive representations and warranties regarding environmental matters.

### **Section 3.16 Employee Benefit Matters.**

(a) **Section 3.16(a)** of the Disclosure Schedules contains a list of each material written benefit, retirement, employment, compensation, incentive, stock option, restricted stock, stock appreciation right, phantom equity, change in control, severance, vacation, paid time off and fringe-benefit agreement, plan, policy and program in effect and covering one or more Employees, former employees of the Company, current or former directors of the Company or the beneficiaries or dependents of any such Persons, and is maintained, sponsored, contributed to, or required to be contributed to by the Company, or under which the Company has any liability for premiums or benefits (as listed on **Section 3.16(a)** of the Disclosure Schedules, each, a “**Benefit Plan**”).

(b) Except as set forth in **Section 3.16(b)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, to Seller’s Knowledge, each Benefit Plan complies with all applicable Laws (including ERISA and the Code and the regulations promulgated thereunder). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “**Qualified Benefit Plan**”) has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified 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 Seller’s Knowledge, nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable. Except as set forth in **Section 3.16(b)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, all benefits, contributions and premiums required by and due under the terms of each Benefit Plan or applicable Law have been timely paid in accordance with the terms of such Benefit Plan, the terms of all applicable Laws and GAAP. With respect to any Benefit Plan, to Seller’s Knowledge, no event has occurred or is reasonably expected to occur that has resulted in or would subject the Company to a Tax under Section 4971 of the Code or the assets of the Company to a lien under Section 430(k) of the Code.

(c) Except as set forth in **Section 3.16(c)** of the Disclosure Schedules, no Benefit Plan: (i) is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; or (ii) is a “multi-employer plan” (as defined in Section 3(37) of ERISA). Except as would not have a material Adverse Effect, neither Seller nor the Company: (i) has withdrawn from any pension plan under circumstances resulting (or expected to result) in a liability of the Company or Buyer to the Pension Benefit Guaranty Corporation; or (ii) has engaged in any transaction which would give rise to a liability of the Company or Buyer under Section 4069 or Section 4212(c) of ERISA.

(d) Except as set forth in **Section 3.16(d)** of the Disclosure Schedules and other than as required under Section 4980B of the Code or other applicable Law, the Company has no obligation under any Benefit Plan to provide benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death or disability benefits provided to active employees but paid after termination when termination of employment occurs upon death or disability).

(e) Except as set forth in **Section 3.16(e)** of the Disclosure Schedules, or as would not have a Material Adverse Effect: (i) there is no pending or, to Seller's Knowledge, threatened action relating to a Benefit Plan, other than claims for benefits in the ordinary course; and (ii) no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority.

(f) Except as set forth in **Section 3.16(f)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, no Benefit Plan exists that could: (i) result in the payment to any Employee, director or consultant 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 Employee, director or consultant, except as a result of any partial plan termination resulting from this Agreement; or (iii) limit or restrict the ability of Buyer or its Affiliates to merge, amend or terminate any Benefit Plan, in each case, as a result of the execution of this Agreement. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in "excess parachute payments" within the meaning of Section 280G(b) of the Code.

(g) The representations and warranties set forth in this **Section 3.16** are the Seller's sole and exclusive representations and warranties regarding employee benefit matters.

### **Section 3.17 Employment Matters.**

(a) Except as set forth in **Section 3.17(a)** of the Disclosure Schedules, the Company is not a party to, or bound by, any collective bargaining or other agreement with a labor organization representing any of its Employees. Except as set forth in **Section 3.17(a)** of the Disclosure Schedules, since January 1, 2010, there has not been, nor, to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting the Company.

(b) To Sellers' Knowledge, Seller has provided Buyer with correct and complete copies of the collective bargaining agreements to which the Company is a party, except that Seller has been unable to obtain and has not provided a full and complete copy of its collective bargaining agreement with the Brotherhood of Locomotive Engineers. Neither Seller nor the Company has received any written notices subsequent to January 1, 2010 alleging that the Company is in default under any collective bargaining agreement. To Seller's Knowledge, the Company is not in default under any collective bargaining agreement and no event has occurred that, with the passage of time or the giving of notice, would constitute a default by the Company under any collective bargaining agreement.

(c) The Company is not a party to any written employment agreements, severance agreements, or other agreements with any of the Company's employees.

(d) To Seller's Knowledge, the Company is in compliance with all applicable Laws pertaining to employment and employment practices, except to the extent non-compliance would not result in a Material Adverse Effect. Except as set forth in **Section 3.16(b)** of the Disclosure Schedules, or as would not have a Material Adverse Effect, there are no actions, suits, claims, investigations or other legal proceedings against the Company pending, or to the Seller's

Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former employee of the Company, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay or any other employment related matter arising under applicable Laws.

(e) The representations and warranties set forth in this **Section 3.17** are the Seller's sole and exclusive representations and warranties regarding employment matters.

**Section 3.18 Taxes.**

(a) Except as set forth in **Section 3.18** of the Disclosure Schedules:

(i) The Company has timely filed (taking into account any valid extensions) all Tax Returns required to be filed by the Company. Such Tax Returns are true, complete and correct in all material respects. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business. All Taxes due and owing by the Company have been paid or accrued.

(ii) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(iii) There are no on-going actions, suits, claims, investigations or other legal proceedings by any taxing authority against the Company.

(iv) The Company is not a party to any Tax-sharing agreement and the Company does not have any obligation to Seller for payment or reimbursement of any Taxes.

(v) All Taxes which the Company is obligated to withhold from amounts owing to any employee, creditor or third party have been duly withheld and have been paid over to the appropriate taxing authority no later than the required payment date.

(b) Except for certain representations related to Taxes in **Section 3.16**, the representations and warranties set forth in this **Section 3.18** are the Seller's sole and exclusive representations and warranties regarding Tax matters.

**Section 3.19 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

**Section 3.20 No Other Representations and Warranties.** Except for the representations and warranties contained in this **Article III** (including the related portions of the Disclosure Schedules), none of Seller, the Company or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Company furnished or made available to Buyer and its Representatives (including management presentations or in any other form in expectation of the transactions contemplated

hereby) or as to the future revenue, profitability or success of the Company, or any representation or warranty arising from statute or otherwise in law.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this **Article IV** are true and correct as of the date hereof.

**Section 4.1 Organization and Authority of Buyer.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Colorado. Buyer has all necessary corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 4.2 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the articles of incorporation or by-laws of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. Except for the consent and approval of the United States Surface Transportation Board, consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

**Section 4.3 Investment Purpose.** Buyer is acquiring the Shares solely for the purpose of investment and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Shares are not registered under the Securities Act of 1933, as amended, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Buyer is able to bear the economic risk of holding the Shares for an indefinite period (including total loss of its

investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

**Section 4.4 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

**Section 4.5 Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

**Section 4.6 Legal Proceedings.** Except as set forth in **Section 4.06** of the Disclosure Schedules, there are no actions, suits, claims, investigations or other legal proceedings pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

**Section 4.7 Independent Investigation.** Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller and the Company for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in **Article III** of this Agreement (including the related portions of the Disclosure Schedules); and (b) none of Seller, the Company or any other Person has made any representation or warranty as to Seller, the Company or this Agreement, except as expressly set forth in **Article III** of this Agreement (including the related portions of the Disclosure Schedules). Buyer acknowledges that, should the Closing occur, Buyer shall acquire the Company without any representation or warranty as to merchantability or fitness for any particular purpose of the Company's assets, on an "as is" and "where is" basis, except as expressly set forth in this Agreement.

**Section 4.8 Investment Intent.** Buyer (i) understands that the Shares have not been, and, as of the Closing Date, will not be, registered under the Securities Act, or under any state securities laws, and are being offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering, (ii) is acquiring the Shares solely for its own account for investment purposes, and not with a view to the distribution thereof, (iii) is a sophisticated investor with knowledge and experience in business and financial matters, (iv) has received certain information concerning Seller and the Company and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding the Shares, (v) is able to bear the economic risk and lack of liquidity inherent in holding the Shares, and (vi) is an accredited investor.

## ARTICLE V COVENANTS

**Section 5.1 Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall, and shall cause the Company to: (a) conduct the business of the Company in the ordinary course of business; and (b) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its Employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. From the date hereof until the Closing Date, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall not cause or permit the Company to take any action that would cause any of the changes, events or conditions described in **Section 3.7** to occur.

**Section 5.2 Access to Information.** From the date hereof until the Closing, Seller shall, and shall cause the Company to: (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, contracts, agreements and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller and the Company to cooperate with Buyer in its investigation of the Company; *provided, however*, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller's personnel and in such a manner as not to interfere with the normal operations of the Company. Notwithstanding anything to the contrary in this Agreement, neither Seller nor the Company shall be required to disclose any information to Buyer if such disclosure would, in Seller's sole discretion: (x) cause significant competitive harm to Seller, the Company and their respective businesses if the transactions contemplated by this Agreement are not consummated; (y) jeopardize any attorney-client or other privilege; or (z) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, which may be withheld for any reason, Buyer shall not contact any suppliers to, or customers of, the Company and Buyer shall have no right to perform invasive or subsurface investigations of the Real Property. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this **Section 5.2**.

**Section 5.3 Supplement to Disclosure Schedules.** From time to time prior to the Closing, Seller shall supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof (each a "**Schedule Supplement**"), and each such Schedule Supplement shall be deemed to be incorporated into and to supplement and amend the Disclosure Schedules as of the Closing Date; *provided, however*, that in the event such event, development or occurrence which is the subject of the Schedule Supplement constitutes or relates to something that has had a Material Adverse Effect, is a result of a breach by Seller of any covenant or agreement of Seller in this Agreement, or should have been disclosed upon execution of this Agreement to make the representation and warranty true and correct at that time, then Buyer shall have the right to terminate this Agreement for failure to

satisfy the closing condition set forth in **Section 6.2(a)**; *provided, further*, that if Buyer has the right to, but does not elect to terminate this Agreement within ten (10) Business Days of its receipt of such Schedule Supplement, then Buyer shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such matter under any of the conditions set forth in **Section 7.2** and, further, shall have irrevocably waived its right to indemnification under **Section 7.2** with respect to such matter, except with respect to any matter that is the result of Seller's intentional breach of any covenant or representation or warranty contained in this Agreement; and *further provided*, that if any Schedule Supplement is delivered within ten (10) Business Days of any scheduled Closing Date, such Closing Date shall be automatically extended to the date that is ten (10) Business Days following the delivery of such Schedule Supplement.

**Section 5.4 Resignations.** At Closing, Seller shall deliver to Buyer written resignations, effective as of the Closing Date, of all of the officers and directors of the Company, with the resignations to be effective as of the Effective Time.

**Section 5.5 Employees; Benefit Plans.**

(a) Seller shall cause the right of all employees of the Company to participate in any Benefit Plans maintained by Seller or Seller's Affiliates to be terminated effective as of the Effective Time, at Seller's sole cost and expense, and any amounts required to be funded by the Company in connection with the benefits payable through the Effective Time shall be accrued on the Closing Statement as a Current Liability. In connection with the termination of the Company's employees right to participate in any such Benefit Plans, Seller shall prepare and file all notices, applications and reports that are required to be prepared and filed in connection with the termination of the Benefit Plans.

(b) With respect to any employee benefit plan maintained by Buyer or its Subsidiaries (collectively, "**Buyer Benefit Plans**") in which any Employee who remains employed immediately after the Closing ("**Company Continuing Employee**") will participate effective as of the Closing, Buyer shall, or shall cause the Company to, recognize all service of the Company Continuing Employees with the Company or any of its Subsidiaries, as the case may be as if such service were with Buyer, for vesting and eligibility purposes in any Parent Benefit Plan in which such Company Continuing Employees may be eligible to participate after the Effective Time; *provided, however*, such service shall not be recognized to the extent that (x) such recognition would result in a duplication of benefits or (y) such service was not recognized under the corresponding Benefit Plan.

(c) From and after the Closing Date, Seller shall be solely responsible for and shall provide all retiree medical and other benefits owed to William Macormic and Jess Cranford pursuant to the terms of that certain Sheffield Steel Corporation Group Insurance Plan for Salary Retired Associates, Sand Springs Division, effective December 1, 2003.

(d) This **Section 5.5** shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this **Section 5.5**, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this **Section 5.5**. Nothing contained herein, express or implied, shall be construed to establish, amend

or modify any benefit plan, program, agreement or arrangement. The parties hereto acknowledge and agree that the terms set forth in this **Section 5.5** shall not create any right in any Employee or any other Person to any continued employment with the Company, Buyer or any of their respective Affiliates or compensation or benefits of any nature or kind whatsoever.

**Section 5.6 Director and Officer Indemnification and Insurance.**

(a) Following Closing, Seller shall be solely responsible for all rights to indemnification, advancement of expenses and exculpation by the Company now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer or director of the Company, as provided in the certificate of incorporation or by-laws of the Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date hereof.

(b) Seller shall (i) maintain in effect for a period of six (6) years after the Closing Date, if available, the current policies of directors' and officers' liability insurance maintained by the Company immediately prior to the Closing Date (provided that Seller may substitute therefor policies, of at least the same coverage and amounts and containing terms and conditions that are not less advantageous to the directors and officers of the Company when compared to the insurance maintained by the Company as of the date hereof), or (ii) obtain as of the Closing Date "tail" insurance policies with a claims period of six (6) years from the Closing Date with at least the same coverage and amounts, and containing terms and conditions that are not less advantageous to the directors and officers of the Company, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement).

(c) The obligations of Seller under this **Section 5.6** shall not be terminated or modified in such a manner as to adversely affect any director or officer to whom this **Section 5.6** applies without the consent of such affected director or officer (it being expressly agreed that the directors and officers to whom this **Section 5.6** applies shall be third-party beneficiaries of this **Section 5.6**, each of whom may enforce the provisions of this **Section 5.6**).

(d) In the event Seller or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Seller or its successor or assigns, as the case may be, shall assume all of the obligations set forth in this **Section 5.6**.

**Section 5.7 Confidentiality.** Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this **Section 5.7** shall nonetheless continue in full force and effect.

## **Section 5.8 Governmental Approvals and Other Third-party Consents**

(a) Each party hereto shall, as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement, including the consent and approval of the United States Surface Transportation Board. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(c) Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 3.5** and **Section 4.2** of the Disclosure Schedules.

**Section 5.9 Income Tax Returns.** Seller, at its sole expense, shall prepare and file, when due, all income Tax Returns for the Company for the year ended December 31, 2013 and for the stub period commencing on January 1, 2014 and ending on the day immediately preceding the Closing Date (the “**Stub Period**”). The Company shall pay the income taxes shown on the income Tax Returns in an amount not exceeding the amount accrued on the Closing Statement and Seller shall pay any income taxes due from the Company in excess of the amount accrued on the Closing Statement. Within a reasonable period of time or promptly following any request of Buyer following filing of the Tax Returns for the year ended December 31, 2013 and for the Stub Period, Seller shall deliver to Buyer a “pro forma” returns for the Company for such period, as well as evidence that the Tax Returns have been filed.

**Section 5.10 Books and Records.**

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of six (6) years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such books and records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of six (6) years following the Closing, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this **Section 5.10** where such access would violate any Law.

**Section 5.11 Closing Conditions.** From the date hereof until the Closing, each party hereto shall, and Seller shall cause the Company to, use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Article VI** hereof.

**Section 5.12 Public Announcements.** Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 5.13 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

**Section 5.14 Transfer Taxes.** All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

**Section 5.15 Right of First Offer.**

(a) [Redacted]

**Section 5.16 Post-Closing Payments Received by Seller.** Because the Company's bank accounts are not being transferred to Buyer at Closing, Seller may receive payments of accounts receivable and other amounts belonging to the Company before Buyer is able to notify its customers regarding the Company's new payment arrangements. In the event Seller receives any payments belonging to the Company, no later than Monday of the following week: (a) Seller shall remit the payments received during the week by wire transfer to a Company bank account designated by Buyer; and (b) Seller shall provide Buyer with a reconciliation of the payments received during the week.

**ARTICLE VI  
CONDITIONS TO CLOSING**

**Section 6.1 Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) The United States Surface Transportation Board shall have consented to and approved the transactions contemplated hereby, and such consent and approval shall not have been revoked.

(c) Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 3.5 and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.2, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

**Section 6.2 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in **Article III** that are qualified as to materiality or Material Adverse Effect shall be true and correct in all respects, and the representations and warranties that are not so qualified shall be true and correct in all material respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in **Section 6.2(a)** and **Section 6.2(b)** have been satisfied.

(d) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(e) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying the names and signatures of the officers of Seller authorized to sign this Agreement and the other documents to be delivered hereunder.

(f) The Company and Seller shall have entered into a Lease Agreement, in the form of **Exhibit B** attached hereto (the "**Lease Agreement**"), with respect to the rail served warehouse space and maintenance space more fully described in the Lease Agreement.

(g) Seller shall have delivered, or caused to be delivered, to Buyer stock certificates evidencing the Shares, free and clear of Encumbrances, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank and with all required stock transfer tax stamps affixed, and shall have otherwise complied with Seller's obligations set forth in **Section 2.4**.

**Section 6.3 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in **Article IV** shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in **Section 6.3(a)** and **Section 6.3(b)** have been satisfied.

(d) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(e) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement and the other documents to be delivered hereunder.

(f) Buyer and Seller shall have entered into the Lease Agreement.

(g) Buyer shall have delivered to Seller cash in an amount equal to the Purchase Price less the Deposit Amount by wire transfer of immediately available funds, and shall have otherwise complied with Buyer's obligations set forth in **Section 2.4**.

## **ARTICLE VII INDEMNIFICATION**

**Section 7.1 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is [Redacted] from the Closing Date; provided, however, that (i) the representations and warranties set forth in **Section 3.1**, **Section 3.16**, **Section 3.18**, and **Section 3.19** hereof shall survive until the expiration of the applicable statute of limitations; (ii) the representations and warranties set forth in **Section 3.15** hereof shall survive until the date that is [Redacted] from the Closing Date; and (iii) the representations and warranties set forth in **Section 3.3** hereof shall survive indefinitely. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved. Furthermore, Seller shall continue to have liability for any inaccuracy or breach of such party's representation or warranty that constitutes fraud, without regard to the time period specified above or the dollar limitations set forth in **Section 7.4(b)**.

**Section 7.2 Indemnification By Seller.** Subject to the other terms and conditions of this **Article VII**, Seller shall indemnify Buyer and the Company (to the extent the Company has suffered the Losses) against, and shall hold Buyer and the Company (to the extent the Company has suffered the Losses) harmless from and against, any and all Losses incurred or sustained by,

or imposed upon, Buyer or the Company, as applicable, based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement;

(c) any liability (whether known or unknown as of the date hereof) of the Company for Taxes of the Company for any period prior to the Effective Time, including any Taxes for any period prior to the Effective Time assessed against the Company pursuant to Treasury Regulation §1.1502.6, or any similar law or regulation of any taxing jurisdiction;

(d) any liability (whether known or unknown as of the date hereof) of the Company to the Pension Benefit Guaranty Corporation or in connection with any “multi-employer plan” (as defined in Section 3(37) of ERISA) relating to any period prior to the Effective Time, including any liability as a result of the Company being part of a consolidated group at any time prior to the Effective Time; and

(e) any claim, litigation or other proceeding by or on behalf of [Redacted] .

**Section 7.3 Indemnification By Buyer.** Subject to the other terms and conditions of this **Article VII**, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(c) the operation of the Company and the ownership of the Shares following the Closing Date.

**Section 7.4 Certain Limitations.** The party making a claim under this **Article VII** is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this **Article VII** is referred to as the “**Indemnifying Party**”. The indemnification provided for in **Section 7.2** and **Section 7.3** shall be subject to the following limitations:

(a) Except as set forth in **Section 7.4(c)**, the Indemnifying Party shall not be liable to the Indemnified Party for indemnification under **Sections 7.2(a)** or **Sections 7.3(a)**, as the case may be, until the aggregate amount of all Losses in respect of indemnification under **Section 7.2(a)** or **Section 7.3(a)** exceeds [Redacted] (the “**Deductible**”), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.

(b) Except as set forth in **Section 7.4(c)**, the Indemnified Party shall not be indemnified pursuant to **Section 7.2(a)** or **Section 7.3(a)**, as the case may be, with respect to any Loss if the aggregate amount of all Losses for which the Indemnified Party has received indemnification pursuant to **Section 7.2(a)** or **Section 7.3(a)** has exceeded [Redacted] (the “Cap”).

(c) Subject to **Section 7.4(d)**, neither the Deductible nor the Cap shall be applicable to the following representations and warranties: **Section 3.1**; **Section 3.3**, **Section 3.9**, **Section 3.19**, **Section 4.1**, **Section 4.3**, or **Section 4.4**. The Deductible and Cap also shall not apply with respect to any fraud.

(d) Notwithstanding anything to the contrary contained herein, in no event shall any Indemnified Party be indemnified pursuant to **Section 7.2** or **Section 7.3** for any Losses in excess of the Purchase Price; provided that the limitation contained in this **Section 7.4(d)** shall not apply with respect to any fraud or for any indemnification pursuant to **Section 7.2(c)** or **Section 7.2(d)**.

(e) Payments by an Indemnifying Party pursuant to **Section 7.2** or **Section 7.3** in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party (or the Company) in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(f) In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(g) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(h) Seller shall not be liable under **Section 7.2(a)** for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had actual knowledge of such inaccuracy or breach prior to the Closing. Nothing in this **Section 7.4(h)** shall affect the indemnification obligations of Seller under **Section 7.2(c)**, **Section 7.2(d)**, or **Section 7.2(e)**.

(i) For purposes of determining whether a breach of a representation or warranty has occurred, any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to any representation or warranty shall be considered. If it is determined that, after application of any materiality, Material Adverse Effect or other similar qualification, a breach of a representation or warranty has occurred, for the purpose of determining Losses, such materiality, Material Adverse Effect or other similar qualification shall be disregarded.

## **Section 7.5 Indemnification Procedures.**

(a) **Third-Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third-Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third-Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to **Section 7.5(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to **Section 7.5(b)**, pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available (subject to the provisions of **Section 5.7**) records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) **Settlement of Third-Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed); provided, however, that if a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim, the Indemnifying Party shall provide written notice of such firm offer to the Indemnified Party and the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 7.5(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any claim by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Company’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

**Section 7.6 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement (net of any reductions to such indemnification payments made pursuant to the terms of this Agreement) shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 7.7 Exclusive Remedies.** Subject to **Section 9.11**, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this **Article VII**. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this **Article VII**. This **Section 7.7** is intended to limit the remedies of the Parties with respect to the matters set forth in this Agreement. Nothing in this **Section 7.7** shall limit (a) any Person’s right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to **Section 9.11**, (b) any Person’s right to seek any remedy on account of fraud by any Person, or (c) any Person’s rights with respect to any matter relating to the separate operations of Seller on property not owned by the Company and the Company. For example, the provisions of this **Section 7.7** shall not limit the obligations of Seller for any liability it may have for the migration onto the Company’s property of Hazardous Materials used in or resulting from operations on Seller’s property.

**Section 7.8 [Redacted] .**

**ARTICLE VIII  
TERMINATION**

**Section 8.1 Termination.** This Agreement may be terminated at any time prior to the Closing:

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

(b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VI** and such breach, inaccuracy or failure cannot be cured by Seller by July 31, 2014; or

(ii) any of the conditions set forth in **Section 6.1** or **Section 6.2** shall not have been fulfilled by July 31, 2014, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VI** and such breach, inaccuracy or failure cannot be cured by Buyer by July 31, 2014; or

(ii) any of the conditions set forth in **Section 6.1** or **Section 6.3** shall not have been fulfilled by July 31, 2014, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited;

(ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable; or

(iii) the Closing shall not have occurred on or prior to July 31, 2014.



If to Buyer:

Sand Springs Holdings, LLC  
252 Clayton Street, Fourth Floor  
Denver, CO 80206  
Facsimile: (866) 894-2103  
E-mail: [ayeros@broe.com](mailto:ayeros@broe.com) and [aengeman@omnitrax.com](mailto:aengeman@omnitrax.com)  
Attention: Alex Yeros and Andy Engeman

with a copy to:

Otten, Johnson Robinson, Neff & Ragonetti, P.C.  
950 17<sup>th</sup> Street, Suite 1600  
Denver, CO 80202  
Facsimile: (303) 825-6525  
E-mail: wneff@ottenjohnson.com  
Attention: William R. Neff

**Section 9.3 Interpretation.** For purposes of this Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 9.4 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 9.5 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 9.6 Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 9.7 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 9.8 No Third-party Beneficiaries.** Except as provided in **Section 5.6** and **Article VII**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 9.9 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 9.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CITY OF OKLAHOMA CITY AND THE COUNTY OF OKLAHOMA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS. IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES

THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **Section 9.10(c)**.

**Section 9.11 Remedies.**

(a) Seller agrees that irreparable damage would occur upon a breach of this Agreement by Seller prior to or in connection with the Closing and that Buyer shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which it is entitled at law or in equity.

(b) In the event of a breach of this Agreement by Buyer prior to or in connection with the Closing, Seller shall be entitled to retain the Deposit Amount as Seller's sole and exclusive remedy.

**Section 9.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

SHEFFIELD STEEL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SAND SPRINGS HOLDINGS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

**SOLELY FOR THE PURPOSES  
OF SECTION 7.8:**

**[Redacted]**

**EXHIBIT A**

**[Redacted]**

**EXHIBIT B**

[Redacted]