

**BEFORE THE SURFACE
TRANSPORTATION BOARD**

FD: 35726

RSL RAILROAD, LLC

AND

**TRANSPORT HANDLING
SPECIALISTS, INC.**

234135

ENTERED

Office of Proceedings

April 29, 2013

Part of

Public Record

**NOTICE OF EXEMPTION
FOR CONTINUANCE IN CONTROL**

Submitted By:

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Ohio Supreme Court #: 0064377

Counsel for Petitioner

Dated: April 29, 2013

FEE RECEIVED
April 29, 2013
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TRANSPORTATION BOARD

FILED
April 29, 2013
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Now comes RSL Railroad, LLC (“RSL”), an Ohio Limited Liability Company, by and through its attorney, Andy A. Ginella and Transport Handling Specialists, Inc. (“THS”), located in West Chester, Pennsylvania, and states as follows:

1. Pursuant to the provisions of Section 1180 of the Board’s Railroad Consolidation Rules (49 C.F.R. §1180), Applicant hereby give notice of a request which qualifies for exemption under Section 1180.2(d) (2) of those rules.
2. As relevant here, THS is a noncarrier and currently operates a short line railroad service over a line of railroad located in Big Spring, Texas, Howard County. THS is a member of a short line railroad company, known as RSL, for the purpose of restoring common carrier freight railroad service over a line of railroad located in the City of Massillon, County of Stark, State of Ohio (“The Line”). THS does not operate Big Spring Rail System or RSL, but rather is simply a majority owner.
3. On May 9, 2012, RSL acquired the ownership interest and the right to restore and reestablish The Line. See Exhibit “1” attached hereto and made part of the Exemption.

4. The Line of railroad is owned by PSR Development, Ltd. and is leased to First Street Development, LLC and then assigned to Massillon Energy & Technology Park, LLC, which in turn assigned operating rights on The Line to RSL. See Exhibit "1" attached hereto and made part of the Exemption.
5. RSL now plans to restore common carrier freight service over The Line and will provide that service using the name RSL.
6. THS is a separately owned corporation, which its shareholders are not more than 50% of the RSL members, and is currently operating as a single track of railroad, approximately 2.4 miles long which interchanges with the Union Pacific Railroad once a week with one crew. In addition, RSL has recently filed Verified Notice of Exemption under FD 35672 with the Board to operate a common carrier in Stark County, Ohio, which is located in the City of Massillon, which will serve as a bridge connecting with the Norfolk Southern Railroad. RSL will control The Line which THS is only a member of RSL. THS does not operate Big Spring Rail System or RSL, but rather is simply a majority owner. See Exhibit "3" RSL Operating Agreement showing ownership interest attached hereto and made part of this Exemption.
7. The Line currently owned and operated by RSL will not connect with The Line which is operated by THS as they are located hundreds, if not thousands, of miles apart and there are no plans to connect these lines.
8. Under Section 1180.2(d) (2) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, Section 1180.2(d) (2) exempts the acquisition of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate

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

9. In order to claim the Section 1180.2(d) (2) exemption, Section 1180.4(g) requires the filing of a Verified Notice of Exemption furnishing the information requested in Sections 1180.6(a)(1)(i) – (iii), 1180.6(a)(5) – (6), and 1180.6(a)(7)(ii) of those rules. That information is provided as follows:

A. Summary of exemption request: **49 CFR §1180.6(a) (1) (i)**

As noted above, THS is separately owned and its shareholders are not more than 50% of the RSL members, which separately operates their own common carrier freight service in Big Spring, Texas and is not associated with RSL. RSL plans to restore common carrier freight service over The Line and will provide that service using the name RSL. The Line currently owned and operated by RSL will not connect with the Line in which is operated by THS.

B. Applicants Name, address, and telephone number:

RSL Railroad, LLC
4096 Holiday Street NW
Canton, Ohio 44718
Telephone: 330-649-9600

C. Legal counsel to whom questions should be addressed:

Andy A. Ginella, Esq.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: (330) 649-9600
Fax: (330) 649-9601
E-Mail: andy@ginellalaw.com
Ohio Supreme Court #: 0064377

D. Schedule for consummation: **49 CFR §1180.6(a) (1) (ii)**

The parties intend to operate the proposed Line upon board approval.

E. Purpose to be accomplished: **49 CFR §1180.6(a) (1) (iii)**

The purpose of this request is to allow THS as a member of RSL to restore and reestablish a common carrier freight railroad service on The Line that is located in the City of Massillon, County of Stark, State of Ohio. RSL will provide the freight service and believes that this trackage has potential for generating freight traffic. RSL plans to work closely with the Rail Authority, the local community, and the UP to develop the freight potential of The Line.

F. State(s) in which the property of each carrier is situated: **49 CFR §1180.6(a) (5)**

THS Big Spring, Texas

RSL Massillon, Ohio

G. Map: **49 CFR §1180.6(a) (6)**

See Exhibit “2” attached hereto and made part of the Exemption.

H. Copy of Agreement: **49 CFR §1180.6(a) (7) (ii)**

See Exhibit “1” attached hereto and made part of the Exemption.

I. Related request:

Concurrently with this filing, RSL has submitted a Verified Notice of Exemption for its operation of The Line. That notice has been assigned docket number FD 35672.

J. Other information/certification:

Applicants hereby certify that (1) The Line to be operated by the rail carrier RSL and to be controlled pursuant to this Notice of Exemption does not connect with those of any other carriers controlled by THS; (2) the subject control proceeding is not a part of a series of

anticipated transactions that would connect these railroads with each other; and (3) the transaction does not involve a class I carrier.

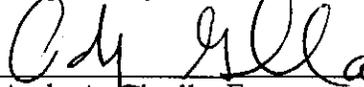
K. Environmental and historical considerations:

This continuance-in-control proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b) (1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old. Accordingly, no historic report is required.

L. Labor protection to be imposed:

No labor protection applies on transactions involving only class III railroads. See 49 U.S.C. §11326(c).

Respectfully Submitted,



Andy A. Ginella, Esq.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: (330) 649-9600
Fax: (330) 649-9601
E-Mail: andy@ginellalaw.com
Ohio Supreme Court #: 0064377

Counsel for Petitioner

Dated: April 29, 2013

EXHIBIT 1

ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING

This **ASSIGNMENT** is made and entered into on this 9TH day of MAY 2012 by and between **Massillon Energy & Technology Park, LLC**, an Ohio Limited Liability Company, by and through Steven DiPietro, the duly authorized managing member (“ME&TP”) (hereinafter "Assignor") and **RSL RAILROAD LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member (“RSL”) (hereinafter "Assignee”)

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns, transfers and sets over unto Assignee all of Assignor’s right, Title and interest in and to the Memorandum of Understanding (MOU) which is marked as “Exhibit A” and Assignment of Memorandum of Understanding which is marked as “Exhibit B” attached hereto and incorporated herein by this reference (MOU) and (AMOU).

BACKGROUND

A. Assignor is a developer and is legally entitled to develop certain real property which is more particularly described in the Memorandum of Understanding (MOU) which is attached hereto and marked as “Exhibit A” and Assignment of Memorandum of Understanding which is marked as “Exhibit B” attached hereto and incorporated herein by this reference (MOU) and (AMOU).

B. In connection with this **ASSIGNMENT**, Assignor desires to assign and warrants to Assignee, all of Assignor’s right, title and interest, to the extent assignable, in and to all property pertaining to and used in connection with the construction, use and operation of the Property as identified in the attached “Exhibit A” and “Exhibit B”, including, without limitation, all guaranties, warranties, permits, approvals, licenses, plans and specifications and Assignee desires to accept said assignment and assume the obligations of Assignor under said leases upon the terms, covenants and conditions set forth in this instrument.

1. Assignment Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the (MOU) and (AMOU).
2. Assumption Effective as of this date, Assignee hereby accepts said assignment and assumes all agreements, covenants, liabilities, obligations and duties on the part of Assignor under the (MOU) and (AMOU) arising from and after the above date.
3. Binding Effect This Assignment will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.
4. Successor and Assigns This Assignment may be assigned in part or all without any express prior written consent; provided further, however, that Assignee may assign its rights and delegate its responsibilities under this Assignment without any express prior written consent.
5. Assignee Indemnification Assignee hereby agrees to indemnify, defend and hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignor may incur, sustain or suffer or which may be asserted or assessed against Assignor, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU) and (AMOU).
6. Assignor Indemnification Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignee may incur, sustain or suffer or which may be asserted or assessed against Assignee, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU) and (AMOU).
7. Governing Law This Assignment will be governed by the laws of the State of Ohio.
8. Counterparts This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee hereby accept and consent to the above **ASSIGNMENT**, intending to be legally bound, the parties have executed this Assignment on the day and year first above-written and agree to perform all obligations under said **ASSIGNMENT** according to its terms and conditions stated herein.

Massillon Energy & Technology Park, LLC,
an Ohio limited liability company

RSL RAILROAD LLC,
an Ohio limited liability company

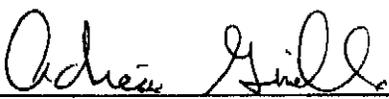
By: 
Steven DiPietro, Member, **ASSIGNOR**

By: 
David DiPietro, Member, **ASSIGNEE**

STATE OF OHIO)
) ss:
STARK COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared the above-named, Steven DiPietro Member of **Massillon Energy & Technology Park, LLC, ASSIGNOR** and David DiPietro, Member of **RSL RAILROAD LLC, ASSIGNEE**, who acknowledged that the foregoing instrument was freely signed.

In Testimony Whereof, I have hereunto set my hand and official seal at Canton, Ohio this 9th day of MAY 2012.


Notary Public

This Instrument Prepared By:
ANDY A. GINELLA, ESQ.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: 330.649.9600
Facsimile: 330.649.9601



ANDREA A. GINELLA
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

~~March~~ ^{May} THIS Memorandum of Understanding ("MOU") is dated this 9TH day of ~~March~~ 2012 by and between **First Street Development, LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("First Street") and **PSR Development, LTD**, an Ohio Limited Liability Company, by and through R. Bitzel Holding Company LLC and it's managing Member, Lori Bitzel, the duly authorized managing member ("PSR").

WHEREAS:

1. PSR is the owner of real property located at 410 Oberlin Road SW, Massillon, Ohio 44647, containing approximately 400 acres ("Premises").
2. First Street is a developer doing business in Ohio.
3. The parties have entered into general discussions in order to explore business opportunities related to the Premises.
4. The parties have entered into a certain understanding regarding terms of First Street's' opportunity to develop the Premises.
5. The parties wish to evidence their agreement regarding the understanding in accordance with the terms and conditions hereinafter provided.

NOW THEREFORE, for good and valuable consideration, the parties, intending to be legally bound hereby, agree as follows:

The recitals given herein above form an integral part of this agreement. The parties agree to comply with the terms of this MOU as stated below:

1. CONFIDENTIALITY

The parties hereby confirm that the terms and conditions herein are Confidential. Said confidentiality shall apply to all information provided by or to any of the parties.

2. PREMISES

The Premises is located at 410 Oberlin Road SW, Massillon, Ohio 44647, containing approximately 400 acres.

PSR will Lease to First Street the entire 400 acres without restrictions for the opportunity to develop said land provided the development does not interfere with any existing leases.

First Street acknowledges that the oil, gas, and mineral rights will remain with PSR and not transfer to First Street.

MEMORANDUM OF UNDERSTANDING

3. TERM

This MOU shall commence upon its execution, and for a term of 5 years with Five (5) Five (5) year renewals at ("First Street") options.

4. RENT

After the property is developed and leased to third parties, First Street will pay to R. Bitzel Holding Company, LLC, a Member of PSR, an annual sum of \$500.00 per acre of the leased property due and payable upon mutual agreement of the parties.

5. REAL ESTATE TAXES, INSURANCE, AND UTILITIES

- a. Real Estate Taxes – PSR will be responsible for the real estate taxes of the Premises. However, as a result of the development of the Premises, First Street agrees to be responsible for any increase in real estate taxes from the commencement of this agreement.
- b. Insurance – First Street will be responsible to obtain general policy and a liability, property, fire and casualty insurance on the premises and equipment in an amount of not less than \$1,000,000.
- c. Utilities – First Street will be responsible for any and all costs associated with gas, electric, water, sewer and trash expenses as it relates to the construction and development of the Premises.

6. CONSTRUCTION, IMPROVEMENTS, AND MAINTENANCE

First Street is responsible for any and all construction, improvements, and maintenance of the Premises. First Street will be responsible for any and all costs associated with said construction, improvements, and maintenance of said Premises.

7. NOTICES

- a. All notices required to be given under this MOU shall be given in writing and shall be deemed to have been given:
 - i. When hand delivered during normal business hours of the recipient, with an acknowledgement of receipt.

MEMORANDUM OF UNDERSTANDING

- ii. When transmitted by facsimile during normal business hours of the recipient, with a confirmation of receipt. All fax notices shall be followed by a copy sent by registered mail, first class courier, return receipt requested.
 - iii. When mailed by registered mail, first class courier, return receipt requested, within five (5) business days of posting.
 - iv. When emailed, with an acknowledgement of receipt.
 - v. When a copy of all notices are sent in the same manor above to Attorney Andy A. Ginella, Esq.
- b. All notices sent by mail shall be sent to the addresses shown on the signature page, unless a change in address has been previously communicated in writing.

8. TERMINATION

This MOU cannot be amended, modified, or terminated except in writing signed by all of the parties hereto or as otherwise provided in this MOU.

9. MISCELLANEOUS

- a. This MOU shall be governed by, and construed in accordance with, the laws of the State of Ohio (excluding conflicts of laws). Subject to Section 5 above, the parties agree that proper jurisdiction and venue for resolution of any and all disputes hereunder shall be in the Court of Common Pleas for Stark County, Ohio and/or the appropriate United States District Court in the State of Ohio.
- b. If any term or provision of this MOU or the application thereof to any person or circumstance shall to any extent be found by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remainder of this MOU, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- c. This MOU shall apply to, inure to the benefit of and bind each of the parties hereto and their respective heirs, personal

MEMORANDUM OF UNDERSTANDING

representatives, devisees, successors and permitted assigns, if any; provided, however, that a party may assign this MOU without the express prior written consent of the other party. PSR will allow First Street to assign or sublease any part or all of the property without their express prior written consent; provided further, however, that PSR may assign its rights and delegate its responsibilities under this MOU.

- d. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- e. Time is of the essence with respect to matters of performance required under this MOU.
- f. This MOU may be executed in multiple counterparts, each of which may contain the signatures of one or more of the parties, all of which, taken together, shall constitute one and the same instrument.
- g. Neither party shall be deemed to have breached this MOU solely as a result of any delay, failure in performance or interruption of service resulting directly or indirectly from any act of God, action of the elements, fire, accident, riot, strike, work stoppage or other labor disturbance, interruption of power or water, act of war, act of terrorism, invasion, civil commotion, enactment of laws or other casualty or cause, whether similar or dissimilar, arising in a manner beyond the reasonable control of the party required to perform and without such party's negligence or willful misconduct.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

MEMORANDUM OF UNDERSTANDING

IN WITNESS WHEREOF the Parties hereto have caused this MOU to be executed by their duly authorized representatives on the day and date indicated below.

On behalf of First Street Development, LLC

4084 Holiday Street NW
Canton, Ohio 44718
Phone:
Fax:
Email:



Signature

MEMBER

Title

DAVID DIPIETRO

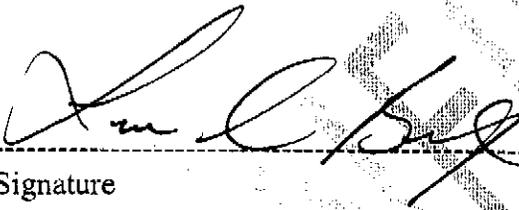
Print

5-9-12

Date

On behalf of PSR Development, LTD

4141 Southway Street SW
Canton, Ohio 44706
Phone:
Fax:
Email:



Signature

Partner

Title

LORIE A. BITZEL

Print

5-9-12

Date

EXHIBIT B

ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING

This ASSIGNMENT is made and entered into on this 9TH day of ~~March~~^{MAY} 2012 by and between **First Street Development, LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("First Street") (hereinafter "Assignor") and **Massillon Energy & Technology Park, LLC**, an Ohio Limited Liability Company, by and through Steven DiPietro, the duly authorized managing member ("ME&TP") (hereinafter "Assignee")

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, Title and interest in and to the Memorandum of Understanding (MOU) which is marked as "Exhibit A" attached hereto and incorporated herein by this reference (MOU).

BACKGROUND

A. Assignor is a developer and is legally entitled to develop certain real property which is more particularly described in the Memorandum of Understanding (MOU) which is attached hereto and marked as "Exhibit A" and incorporated herein by this reference as (MOU).

B. In connection with this ASSIGNMENT, Assignor desires to assign and warrants to Assignee, all of Assignor's right, title and interest, to the extent assignable, in and to all property pertaining to and used in connection with the construction, use and operation of the Property as identified in the attached "Exhibit A", including, without limitation, all guaranties, warranties, permits, approvals, licenses, plans and specifications and Assignee desires to accept said assignment and assume the obligations of Assignor under said leases upon the terms, covenants and conditions set forth in this instrument.

1. Assignment Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the (MOU).

2. Assumption Effective as of this date, Assignee hereby accepts said assignment and assumes all agreements, covenants, liabilities, obligations and duties on the part of Assignor under the (MOU) arising from and after the above date.

3. Binding Effect This Assignment will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. Successor and Assigns This Assignment may be assigned in part or all without any express prior written consent; provided further, however, that Assignee may assign its rights and delegate its responsibilities under this Assignment without any express prior written consent.

5. Assignee Indemnification Assignee hereby agrees to indemnify, defend and hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignor may incur, sustain or suffer or which may be asserted or assessed against Assignor, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU).

6. Assignor Indemnification Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignee may incur, sustain or suffer or which may be asserted or assessed against Assignee, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU).

7. Governing Law This Assignment will be governed by the laws of the State of Ohio.

8. Counterparts This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee hereby accept and consent to the above **ASSIGNMENT**, intending to be legally bound, the parties have executed this Assignment on the day and year first above-written and agree to perform all obligations under said **ASSIGNMENT** according to its terms and conditions stated herein.

First Street Development, LLC,
an Ohio limited liability company

Massillon Energy & Technology Park, LLC,
an Ohio limited liability company

By: [Signature]
David DiPietro, Member, ASSIGNOR

By: [Signature]
Steven DiPietro, Member, ASSIGNEE

STATE OF OHIO)
) ss:
STARK COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared the above-named David DiPietro, Member of First Street Development, LLC, **ASSIGNOR** and Steven DiPietro, Member of Massillon Energy & Technology Park, LLC, **ASSIGNEE**, who acknowledged that the foregoing instrument was freely signed.

In Testimony Whereof, I have hereunto set my hand and official seal at Canton, Ohio this 9th day of MAY 2012.

[Signature]
Notary Public

This Instrument Prepared By:
ANDY A. GINELLA, ESQ.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: 330.649.9600
Facsimile: 330.649.9601



ANDREA A. GINELLA
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

EXHIBIT 2

EXHIBIT 3

RSL RAILROAD, LLC
An Ohio Limited Liability Company

Operating Agreement

Executed: 5-01-2012

Effective: 5-01-2012

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Agreement

This Operating Agreement of RSL RAILROAD, LLC, a Limited Liability Company organized pursuant to Chapter 1705 of the Ohio Revised Code, is entered into on May 1, 2012, and shall be effective as of the Effective Date, by and among the Company and STEVEN P. DIPIETRO, DAVID M. DIPIETRO, TRANSPORT HANDLING SPECIALISTS, INC. by and through BAXTER WELLMON, and JOHN D. EISENHAUT (the “Member(s)”).

ARTICLE I FORMATION

- 1.1. **Definitions.** For purposes of this Agreement, unless the context clearly indicates otherwise, capitalized terms shall have the meanings set forth in Article XVI.
- 1.2. **Organization.** All or a majority of the Members of the Company have formed or will simultaneously with this Agreement form the Company as a Limited Liability Company pursuant to Chapter 1705 of the Ohio Revised Code.
- 1.3. **Agreement, Effect of Inconsistencies with Chapter 1705.** For an in consideration of the mutual covenants in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the Members executing this Agreement agree to the terms and conditions of the Agreement, as it may from time to time be amended according to its terms. It is the express intention of the Members that this Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the code or Regulations or is expressly prohibited or ineffective under Chapter 1705, this Agreement shall govern, even when inconsistent with, or different than, the provisions of chapter 1705 or any other law or rule. To the extent any provision of this Agreement is prohibited or ineffective under Chapter 1705, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under chapter 1705. In the event Chapter 1705 is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members hereby agree that each Member shall be entitled to rely on the provisions of this Agreement, and no Member shall be liable to the Company or to any Member for any action or refusal to act taken in good faith reliance on the terms of this Agreement. The Members and the Company hereby agree that the duties and obligations imposed on the Members of the Company as such shall be those set forth in this Operating Agreement, which is intended to govern the relationship among the company and the Members, notwithstanding any provision of Chapter 1705 or common law to the contrary.
- 1.4. **Name.** The name of the Company is “RSL RAILROAD LLC,” and all business of the Company shall be conducted under that name or under any other name, but in any case, only to the extent permitted by applicable law.

- 1.5. Effective Date. The Agreement shall become effective upon the filing of the Articles of Organization with the Ohio Secretary of State.
- 1.6. Term. The Company shall continue perpetually until dissolved and its affairs wound up in accordance with Chapter 1705 and the Agreement.
- 1.7. Registered Agent and Office. The registered agent for the service of process and the registered office shall be that person and location reflected in the Articles of Organization as filed in the office of the Ohio Secretary of State. The Member-Managers, may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Member-Managers shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Member-Managers shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement-registered agent or file a notice of change of address.
- 1.8. Principal Office. The Principal Office of the Company shall be located at 4084 Holiday Street NW, Canton, Ohio 44718.

ARTICLE II NATURE OF BUSINESS

The Company may engage in any lawful business permitted by Chapter 1705 or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Article II. The Company exists only for the purpose specified in this Article II, and may not conduct any other business without the unanimous consent of the Members. The authority granted to the Members hereunder to bind the Company shall be limited to actions necessary or convenient to this business.

ARTICLE III ACCOUNTING AND RECORDS

- 3.1. Records to be maintained. The Member-Managers shall maintain the following records at the Principal Office:
 - 3.1.1. A current list of the full name and last known business address of each Member, former Member and other holder of a Membership Interest;
 - 3.1.2. A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which Articles has been executed;

- 3.1.3. Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
- 3.1.4. Copies of the Agreement including all amendments thereto;
- 3.1.5. Any financial statements of the Company for the three most recent years;
- 3.1.6. If not set forth in this Agreement, a writing or other data compilation from which information can be obtained through retrieval devices into reasonably usable form setting forth the following:
 - 3.1.6.1. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute;
 - 3.1.6.2. The times at which or events on the happening of which any additional Commitments agreed to be made by each Member are to be made;
 - 3.1.6.3. Any right of a Member to receive, or of the Company to make, distributions to a Member which include a return of all or any part of the Member's Capital Contribution; and
 - 3.1.6.4. Any events upon the happening of which the Company is to be dissolved and its affairs wound up.

3.2. Reports to Members.

- 3.2.1. The Member-Managers shall provide reports at least annually to the Members at such time and in such manner as the Member-Managers may determine reasonable.
- 3.2.2. The Member-Managers shall provide all Members and Assignees with those information returns required by the Code and the laws of any state.

ARTICLE IV
NAMES AND ADDRESSES OF MEMBERS AND MEMBER-MANAGERS

The names and addresses of the Initial Members and the designation of Member-Managers are as reflected on Schedule A attached hereto and by this reference made a part hereof as if set forth fully herein.

ARTICLE V
RIGHTS AND DUTIES OF MEMBERS

5.1. Management Rights. All Members who have not dissociated shall be entitled to vote on any matter submitted to a vote of the Members pursuant to Section 6.3.2.

5.2. Liability of Members. No Member shall be liable as such for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the Agreement or Chapter 1705 shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

5.3. Indemnification. The Company shall indemnify the Members, Member-Managers, and agents for all costs, losses, liabilities, and damages paid or accrued by such Member or agent in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State.

5.4. Representations and Warranties. Each Member, and in the case of an organization, the person(s) executing the Agreement on behalf of the organization, hereby represents and warrants to the Company and each other Member that: (a) if that Member is an organization, that it is duly organized, validly existing, and in good standing under the law of its state of organization and that it has full organizational power to execute and agree to the Agreement to perform its obligations hereunder; (b) that the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; (c) the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

5.5. Conflicts of Interest.

5.5.1. A Member, including a Manager shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the Company may enter. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any property, profit, or benefit derived by the Member, without the consent of a Majority of the Remaining Managers, or, if none, a Majority of the Remaining Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company property including information developed exclusively for the Company and opportunities expressly offered to the Company.

5.5.2. A Member, including a Manager does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if either the transaction is fair to the Company or the Managers or, if none, a Majority of the Remaining Members, in either case knowing the material

facts of the transaction and the Member's interest, authorize, approve, or ratify the transaction.

ARTICLE VI MANAGERS

6.1. **Managers.** The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Manager(s), each of whom shall be Member-Manager(s), by a Majority of the Managers. The Managers may also designate one of them, or any other person, to undertake the day-to-day activities of the Company, and such person may be designated as an officer of the Company by a Majority of the Managers. There initially shall be one Manager, BAXTER WELLMON. Upon the death of BAXTER WELLMON, or expiration of his term pursuant to Section 6.2., the successor Manager, STEVEN P. DIPIETRO, shall be appointed. Each Manager shall have the power and authority to bind the Company and execute documents and otherwise bind the Company on behalf of the Managers and the Members.

6.2. **Term of Member-Manager.** No Member-Manager shall have any contractual right to such position. Each Member-Manager shall serve until the earliest of:

6.2.1. The Dissociation of such Manager;

6.2.2. The Resignation of such Manager; or

6.2.3. Removal of the Manager pursuant to Section 6.7.

6.3. **Authority of Members to Bind the Company.** Only the Managers and agents of the Company authorized by the Managers shall have the authority to bind the Company. No Member who is not either a Manager or otherwise authorized as an agent shall take any action to bind the Company, and each Member shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

6.3.1. Each Manager has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business, affairs, and interests of the Company, including, without limitation:

6.3.1.1. The institution, prosecution and defense of any proceeding in the Company's name;

6.3.1.2. The purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with Property, wherever located;

6.3.1.3. The sale, conveyance, mortgage, pledge, lease, exchange, and other disposition of Property;

6.3.1.4. The entering into contracts and guaranties; incurring of liabilities; borrowing money, issuance of notes, bonds, and other obligations; and

the securing of any of its obligations by mortgage or pledge of any of its Property or income;

- 6.3.1.5. The lending of money, investment and reinvestment of the Company's funds, and receipt and holding of Property as security for repayment, including, without limitation, the loaning money to, and otherwise helping Members, officers, employees, and agents;
 - 6.3.1.6. The conduct of the Company's business, the establishment of Company offices, and the exercise of the powers of the Company within or without the State of Ohio;
 - 6.3.1.7. The appointment of employees and agents of the Company, the defining of their duties, the establishment of their compensation;
 - 6.3.1.8. The payment of pensions and establishment of pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former Members, employees, and agents of the Company;
 - 6.3.1.9. The making of donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;
 - 6.3.1.10. The payment or donation, or any other act that furthers the business and affairs of the Company;
 - 6.3.1.11. The payment of compensation, or additional compensation to any or all Members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;
 - 6.3.1.12. The purchase of insurance the life of any of its Members, or employees for the benefit of the Company;
 - 6.3.1.13. The participation in partnership agreements, joint ventures, or other associations of any kind with any person or persons;
 - 6.3.1.14. The indemnification of Members or any other Person.
- 6.3.2. Notwithstanding the foregoing provisions, however, a Manager shall have no authority to undertake any of the following, except upon authorization of a majority of the Members:
- 6.3.2.1. Assign the Property of the Company in trust for creditors or on the Assignee's promise to pay the debts of the Company;

- 6.3.2.2. Dispose of the goodwill of the business of the Company;
- 6.3.2.3. Do any other act that would make it impossible to carry on the ordinary business of the Company;
- 6.3.2.4. Confess a judgment; or
- 6.3.2.5. Submit a claim or liability of the Company to arbitration or referee.

6.4. Actions of the Managers. Each Manager has the power to bind the Company as provided in this Article VI. Any disagreement between the Managers (if there be more than one) as to the authority of a Manager shall be decided by a Majority of the Remaining Members. No act of a Member in contravention of such determination shall bind the Company to Persons having knowledge of such determination. Notwithstanding such determination, the act of Manager for the purpose of apparently carrying on in the usual way the business or affairs of the Company, including the exercise of the authority indicated in this Article VI, shall be binding on the Company, and no person dealing with the Company shall have any obligation to inquire into the power or authority of the Manager acting on behalf of the Company.

6.5. Compensation of Member-Manager. Each Manager shall be reimbursed all reasonable expenses incurred in managing the Company and shall be entitled to compensation, in an amount to be determined from time to time by the affirmative vote of a Majority of the Members.

6.6. Manager's Standard of Care. A Manager's duty of care in the discharge of the Manager's duties to the Company and the other Members limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. In discharging its duties, a Member-Manager shall be fully protected in relying in good faith upon the records required to be maintained under Article III and upon such information, opinions, reports or statements by any of its other Members, or agents, or by any other person, as to matters the Manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

6.7. Removal of Member-Manager. Any Member-Manager may be removed as the Manager by the affirmative vote of a Majority vote of the Remaining Members.

ARTICLE VII CONTRIBUTIONS AND CAPITAL ACCOUNTS

7.1. Initial Contributions. Each Initial Member shall make the Capital Contribution described for that Member on Schedule A at the time and on the terms specified on Schedule A and shall perform that Member's Commitment. If no time for contribution is specified, the Capital Contributions shall be made upon the filing of the Articles with the Secretary of State. The value of the Capital Contributions shall be as set forth on Schedule A. No interest shall accrue on any

Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement. Each Additional Member shall make the Initial Capital Contribution described in the Admission Agreement. The value of the Additional Member's Initial Capital Contribution and the time for making such contribution shall be set forth in the Admission Agreement.

7.2. Additional Contributions. In addition to the Initial Capital Contributions and Commitments, the Managers may determine from time to time that additional contributions are needed to enable the Company to conduct its business. Upon making such a determination, the Managers shall give Notice to all Members in writing at least ten (10) Business Days prior to the date on which such contribution is due. Such Notice shall set forth the amount of additional contribution needed, the purpose for which the contribution is needed, and the date by which the Members should contribute. Each Member shall be entitled to contribute a proportionate share of such additional contribution. Except to the extent of a Member's unpaid Commitment, no Member shall be obligated to make any such additional contributions. In the event any one or more Members do not make their additional contribution, the other Members shall be given the opportunity to make the contributions. Each Additional Member shall make the Capital Contribution to which such Member has agreed, at the time or times and upon the terms to which the Managers and the Additional Member agree.

7.3. Enforcement of Commitments. In the event any Member (a Delinquent Member) fails to perform the Delinquent Member's Commitment, the Managers shall give the Delinquent Member a Notice of the failure to meet the Commitment. If the Delinquent Member fails to perform the Commitment (including any costs associated with the failure to demand compliance with the Commitment and interest on such obligation at the Default Interest Rate) within ten (10) Business Days of the giving of Notice, the Managers may take such action, including but not limited to enforcing the Commitment in the court of appropriate jurisdiction in the state in which the Principal Office is located or the state of the Delinquent Member's address as reflected in the Agreement. Each Member expressly agrees to the jurisdiction of such courts but only for the enforcement of Commitments. The Managers may elect to allow the other Members to contribute the amount of the Commitment in proportion to such Members' sharing ratios, with those Members who contribute (Contributing Members) to contribute additional amounts equal to any amount of the Commitment not contributed. The Contributing Members shall be entitled to treat the amounts contributed pursuant to this section as a loan from the Contributing Members bearing interest at the Default Interest Rate secured by the Delinquent Member's interest in the Company. Until they are fully repaid the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been entitled. Notwithstanding the foregoing, no Commitment or other obligation to make an additional contribution may be enforced by a creditor of the Company or other Person other than the Company unless the Member expressly consents to such enforcement or to the assignment of the obligation to such creditor.

7.4. Maintenance of Capital Account. The Company shall establish and maintain Capital Accounts for each Member and Assignee. Each Member's Capital Account shall be increased by (1) the amount of any Money actually contributed by the Member to the capital of the Company, (2) the fair market value of any Property contributed, as determined by the Company and the

Contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such Property, within the meaning of Section 751 of the Code), and (3) the Member's share of Net Profits and of any separately allocated items of income or gain except adjustments of the Code (including any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member). Each Member's Capital Account shall be decreased by (1) the amount of any Money distributed to the Member by the Company, (2) the fair market value of any Property distributed to the Member, as determined by the Company and the Contributing Member at arm's length at the time of contribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such Property within the meaning of Section 752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss (including any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

7.5. Distribution of Assets. If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Article VIII below) of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

7.6. Sale or Exchange of Interest. In the event of a sale or exchange of some or all of a Member's interest in the Company, the Capital Account of the Transferring Member shall become the capital account of the Assignee, to the extent it relates to the portion of the interest Transferred.

7.7. Compliance with Section 704(b) of the Code. The provisions of this Article VII as they relate to the maintenance or Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Article VIII to have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code, in light of the distributions made pursuant to Articles VIII and XIII and the Capital Contributions made pursuant to this Article VII. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a Capital Contribution in excess of the Initial Contribution.

ARTICLE VIII ALLOCATIONS AND DISTRIBUTIONS

8.1. Allocations of Net Profits and Net Losses from Operations. Except as may be required by Section 704(c) of the Code, and §§ 2, 3 and 4 of this Article VIII, net profits, net losses, and other items of income, gain, loss, deduction and credit shall be shared equally among the Members as follows: DAVID M. DIPIETRO 16.67%, STEVEN P. DIPIETRO 16.67%, TRANSPORT HANDLING SPECIALISTS, INC. 50%, AND JOHN D. EISENHAUT 16.66%.

8.2. Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year shall be shared equally among the Members as identified in ARTICLE VIII of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied equally among the Member's as identified in ARTICLE VIII of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain Chargeback Requirement to the extent the Member's equally share in the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a Recourse Liability or a Member Non-recourse Liability, and the Member bears the economic risk of loss (within the meaning of §1.752-2 of the regulations) for the newly guaranteed, refinanced or otherwise changed liability.

8.3. Member Minimum Gain Chargeback. If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under §1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) shall be shared equally among the Members as identified in ARTICLE VIII of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of Section 1.704-2(g)(2) of the Regulations. A Member is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Non-recourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Non-recourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's equally of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied equally to each Member's Minimum Gain and Member's Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to §1.704(b) of the Code.

8.4. Qualified Income Offset. In the event any Member, in such capacity, unexpectedly receives an Offsettable Decrease, such Member will be allocated items of income and gain (shall be shared equally among the Members as identified in ARTICLE VIII each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

8.5. Interim Distributions. From time to time, the Managers shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. To the extent such excess exists, the Managers may make distributions to the Members equally as identified in ARTICLE VIII above. Such distributions shall be in cash or Property or partly in both, as determined by the Managers.

8.6. Limitations on Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their Capital Accounts.

ARTICLE IX TAXES

9.1. Elections. The Managers may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

9.2. Taxes of Taxing Jurisdictions. To the extent that the laws of any Taxing Jurisdiction requires, each Member and Economic Interest Holder (or such Members as may be required by the Taxing Jurisdiction) will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest, and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a distribution for purposes of Article VIII.

The Managers may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax interest and penalties so paid.

9.3. Tax Matters Partner. The Managers shall designate one of their number or, if there are no Managers eligible to act as tax matters partner any other Member, as the tax matters partner of the Company pursuant to Section 6231(a)(7) of the Code. Any Member designated as tax matters partner shall take such action as many are necessary to cause each other Member to become a notice partner within the meaning of Section 6223 of the Code. Any Member who is designated tax matter partner may not take any action contemplated by Sections 6222 through 6232 of the Code without the consent of the Managers.

9.4. Method of Accounting. The records of the Company shall be maintained on a method of method of accounting selected by the Managers.

ARTICLE X
DISPOSITION OF MEMBERSHIP INTERESTS

10.1. Restriction. Any Member or Assignee of a Membership Interest may Dispose all or a portion of the Member's or Assignee's Membership Interest only in and upon compliance with this Article X. Any attempted Disposition of a Membership Interest, or any part thereof, not in compliance with this Article X shall be, and is declared to be, null and void *ab initio*.

10.2. Permitted Transfers. Subject to the conditions and restrictions set forth in Section 10.3 hereof, a Member or Assignee may at any time dispose all or any portion of his, her, or its Membership Interest to:

10.2.1 Members. To another Member;

10.2.2 Permitted Transferees. To a Permitted Transferee;

10.2.3 Executor, etc. To the Transferor's executor, administrator, trustee, or personal representative to whom such Membership Interest is transferred at death or involuntarily by operation of law; or

10.2.4 Purchasers. To any Purchaser only pursuant to a Bona Fide Offer in accordance with Section 10.4.

10.3. Conditions to Permitted Transfer. A Disposition shall not be considered and treated as a "Permitted Transfer" under Section 10.2. unless and until all of the following conditions are satisfied:

10.3.1 Instruments of Conveyance. Except in the case of a Disposition of an interest at death or involuntarily by operation of law, the Transferor and Transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Disposition and to confirm the agreement of the Transferee to be bound by this Agreement. In any case not described in the preceding sentence, the Disposition shall be confirmed by presentation to the Company of legal evidence of such Disposition, in form and substance satisfactory to counsel to the Company. In all such cases, the Company shall be reimbursed by the Transferor and/or the Transferee, who shall be jointly and severally liable, for all costs and expenses incurred by the Company by reason of such Disposition.

10.3.2 Counsel opinion. Except in the case of a Disposition at death or involuntarily by operation of law, the Company shall have obtained an opinion of counsel that the Disposition would not cause the Company to terminate for purposes of the Act or the Code, and that such Disposition would not cause application of the rules of §168(g)(1)(B) and 168(h) of the Code (generally referred to as the "tax exempt

entity leasing rules") or similar rules to apply to the Company, Company Property, Members, or Assignees.

10.3.3 Transferee Information. The Transferor and Transferee shall furnish to the Company (i) the Transferee's taxpayer identification number, (ii) sufficient information to determine the Transferee's initial tax basis in the Interest transferred, and (iii) any other information reasonably necessary to permit the Company to file all required federal, state, and local tax returns and other legally required information statements or returns.

10.3.4 Registration. Except in the case of a Disposition of an Interest at death or involuntarily by operation of law, either (i) such Interest shall be registered under the Securities Act of 1933, as amended, and any other applicable securities laws, or (ii) the Company shall have obtained an opinion of counsel to the effect that such Disposition is exempt from all applicable registration requirements and that such Disposition will not violate any applicable laws regulating the Disposition of such securities.

10.4. Sale to a Purchaser pursuant to a Bona Fide Offer.

10.4.1. Bona Fide Offer. A Member or Assignee desiring to sell all or any portion of his, her or its Membership Interest to a Person other than a Member or Permitted Transferee shall first obtain from such Person a Bona Fide Offer to Purchase the Interest. Upon receipt of a Bona Fide Offer the Disposing Member shall serve notice of his or her intention to so dispose of such Membership Interest (the "Offered Interest") to the Company and each Member, which notice shall include a true copy of the Bona Fide Offer.

10.4.2. Company Right of First Refusal. The Company shall have the right to purchase all, but not less than all of the Offered Interest. The right may be exercised, at the Manager's sole discretion, by giving Notice of its intention to purchase the Offered Interest to the Disposing Member or Assignee within fifteen (15) Business Days after receipt of the Disposing Member's Notice.

10.4.3. Member's Right of First Refusal.

10.4.3.1. If the Company does not exercise its right to purchase the Offered Interest, whether by the expiration of time or the giving Notice of such to the Disposing Member or Assignee, the Disposing Member shall so notify all of the Remaining Members. The Remaining Members shall have the right, on a pro rata basis, to purchase all, but not less than all of the portion of the Offered Interest offered to them by giving Notice of their intention to purchase the Offered interest to the Disposing Member or Assignee within fifteen (15) Business Days after receipt of the Disposing Member's Notice.

- 10.4.3.2. Any portion of the Offered Interest upon which there has then not been an exercise in writing of the right to purchase, shall then be offered by the Disposing Member to those Members, if any, who exercised their right of purchase within the fifteen (15) Business Days provided for in subsection 10.4.3.1. This secondary right of purchase may be exercised within fifteen (15) Business Days after receipt of Notice thereof, which exercise shall be for any portion of the then remaining Offered Interest and shall be honored by the Disposing Member in full in the order received.
- 10.4.4. Consummation of a Bona Fide Offer. If none of the Remaining Members timely notifies the Disposing Member of their intention to exercise their right of purchase described in subsection 10.4.3.1., or if, upon the expiration of the time for exercising the right granted under subsection 10.4.3.2., the Remaining Members have not exercised rights sufficient to purchase all of the Offered Interest, the right of first refusal regarding the Offer shall terminate and the Disposing Member shall be entitled to sell the Offered Interest, provided that the sale is (i) on substantially the same terms as the Offer, and (ii) consummated within thirty (30) days of the expiration of the right of first refusal. If such Bona Fide Offer sale is not consummated within thirty (30) days after expiration of the right of first refusal, any attempted Disposition thereafter will be deemed a new Bona Fide Offer and the terms of this Section 10.4 shall apply anew.
- 10.4.5. Purchase Price and Terms; Allocations. The purchase price to be paid for any Membership Interest purchased pursuant to this Section 10.4. (the "Purchase Price"), shall be the price contained in the Offer. The Purchase Price shall be paid, at the option of the acquiring Person (e.g. the Company or the Members), either (i) upon the same terms as the Offer, or (ii) by paying twenty percent (20%) of the Purchase Price at the closing of the transactions and giving the Disposing Member an unsecured negotiable promissory note bearing interest at the highest prime interest rate charged on the date of the closing by the banks with which the Company has a bank account. Said promissory note shall provide for twenty (20) equal quarterly payments, with the payments commencing three (3) months after the closing of the transaction.

ARTICLE XI
DISSOCIATION OF A MEMBER

- 11.1. Dissociation. A Person shall cease to be a Member upon the happening of any of the following events:
- 11.1.1. The Member becoming a Bankrupt Member;
 - 11.1.2. In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person estate;

- 11.1.3. In the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- 11.1.4. In the case of a Member that is a separate Organization other than a corporation, the dissolution and commencement of winding up of the separate Organization;
- 11.1.5. In the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- 11.1.6. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

ARTICLE XII
ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

12.1. Rights of Assignees. The Assignee of a Membership Interest has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Net Profits and Net Losses attributable to the Membership Interest as identified in ARTICLE VIII above.

12.2. Admission of Substitute Members. An Assignee of a Membership interest shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Membership Interest only upon approval by a Super-Majority of the Remaining Members. The Members may grant or withhold the approval of such admission for any in their sole and absolute discretion. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally owning the Membership Interest. The admission of a Substitute Member, without more, shall not release the Member originally assigning the Membership interest from any liability to Company that may existed prior to the approval.

12.3. Admission of Permitted Transferees. Notwithstanding Section 12.2. hereof, the Membership Interest of any Member shall be transferable without the consent of the Members if (i) the transfer occurs by reason of or incident to the death, dissolution, divorce, liquidation, merger or termination of the transferor Member, and (ii) the Transferee is a Permitted Transferee.

12.4. Admission of Additional Members. The Members, by Super-Majority vote, may permit the admission of Additional Members and determine the Capital Contributions of such Members.

ARTICLE XIII
DISSOLUTION

13.1. Dissolution. The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events:

13.1.1. The unanimous written agreement of all Members to dissolve the Company;

13.1.2. The withdrawal of a Member of the Company, unless the business of the Company is continued by the consent of all of the Remaining Members or under a right to continue the Company that is stated in writing in the Operating Agreement;

13.1.3. Upon entry of a decree of judicial dissolution under Section 1705.47 of the Act.

13.2. Effect of Dissolution. Upon dissolution, the Company shall cease carrying on as distinguished from the winding up of the Company business, but the Company is not terminated, but continues until the winding up of the affairs of the Company is completed and the Certificate of Dissolution has been issued by the Secretary of State.

13.3. Distribution of Assets on Dissolution. Upon the winding up of the Company, the Company Property shall be distributed:

13.3.1. To creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of Company Liabilities;

13.3.2. To Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within sixty (60) days of the end of the Company's taxable year or, if later, within ninety (90) days after the date of liquidation. Such distributions shall be in cash or Property (which need to be distributed equally) or partly in both, as determined by the Managers.

13.4. Winding Up and Certificate of Dissolution. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefore has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, a Certificate of Dissolution shall be delivered to the Secretary of State for filing. The Certificate of Dissolution shall set forth the information required by Chapter 1705.

ARTICLE XIV AMENDMENT

14.1. Agreement May Be Modified. The Agreement may be modified as provided in this Article XIV (as the same may, from time to time be amended). No Member or Manager shall have any vested rights in the Agreement, which may not be modified through an amendment to the Agreement.

14.2. Amendment or Modification of Agreement. The Agreement may be amended or modified from time to time only by a written instrument adopted by the Managers and executed by a Majority of the Members.

ARTICLE XV
MISCELLANEOUS

15.1. Entire Agreement. The Agreement represents the entire agreement among all of the Members and between the Members and the Company.

15.2. No Partnership Intended for Non-tax Purposes. The Members have formed the Company under Chapter 1705, and expressly do not intend hereby to form a partnership under either the State Uniform Partnership Act nor the State Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

15.3. Rights of Creditors and Third Parties under Agreement. The Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under the Agreement, Admission Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

15.4. Notices. Any notice or payment required or permitted under this Agreement shall be given and served either by personal delivery to the party to whom it is directed, or by registered or certified mail, postage and charges prepaid, and if it is sent to a Member, addressed with his or her address as it appears on the records of the Company. Any notice is deemed given on the date on which it is personally delivered, or, if mailed, on the date it is deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as required in this Section 15.4. Any Member may change his or her address for all purposes of this Agreement by giving notice in writing, stating his or her new address, to the Manager. Such a change of address will be effective fifteen (15) days after the notice is received by the Manager.

15.5. Non-Waiver. Any party's failure to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

15.6. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reasons whatsoever, its invalidity will not affect the validity of the remainder of the Agreement.

15.7. Good Faith. The doing of any act or the failure to do any act by a Member or the Company, the effect of which causes ally loss or damage to the Company, will nor subject such Member or the Company to any liability, if done pursuant to advice of the Company's legal counsel or in good faith to promote the Company's best interests.

15.8. Governing Law. This Agreement is to be construed according to the laws of Ohio.

15.9. Cumulative Rights. The rights and remedies provided in this Agreement are cumulative and the use of any right or remedy does not limit a party's right to use any or all other remedies. All rights and remedies in this Agreement are in addition to any other legal rights the parties may have.

15.10. Other Activities. Every Member may also engage in whatever activities he or she chooses without having or incurring any obligation to offer any interest in such activities to any party hereof.

15.11. Confidentiality. No Member may, without the Manager's express written consent, divulge to others any information not already known to the public pertinent to the services, clients, customers or operations of the Company, whether before or after the Company's dissolution.

15.12. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

15.13. Waiver of Partition and Appraisal. The Members accept the provisions of this Agreement as their sole entitlement with respect to termination of the Company or a sale or liquidation of their Membership Interests. Each of the parties waives during the term of the Company any right that he or she may have (i) to maintain any action for partition with respect to the Company's Property or assets, and (ii) to have a deceased Member's interest appraised and sold as provided under any applicable statute, law, or regulation.

15.14. Binding Terms. The terms of this Agreement are binding upon and inure to the benefit of the parties and, to the extent permitted by this Agreement, their heirs, executors, administrators, legal representatives, successors and assigns.

15.15. Personal Property. The interests of each Member in the Company are personal property.

15.16. "Days" Defined. For purposes of this Agreement, any reference to a "day" or "days" means a calendar day, including any days, which fall on legal holidays or weekends.

15.17. Gender and Number. Unless the context requires otherwise, the use of a masculine pronoun includes the feminine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

ARTICLE XVI
DEFINITIONS

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

16.1. Chapter 1705. Chapter 1705 of the Ohio Revised Code, as may be amended or redesignated from time to time.

16.2. Additional Member. A Member other than an Initial Member or a Substitute Member who has acquired a Membership Interest from the Company.

16.3. Admission Agreement. The Agreement between an Additional Member and the Company described in Article XII.

16.4. Agreement. This Operating Agreement including all amendments adopted in accordance with the Agreement and Chapter 1705.

16.5. Articles. The Articles of Organization of the Company as properly adopted and amended from time to time and filed with the Secretary of State.

16.6. Assignee. A Person to whom a Membership Interest has been transferred who has not been admitted as a Substitute Member.

16.7. Bankrupt Member. A Member who: (1) has become the subject of an Order for Relief under the United States Bankruptcy Code, (2) has initiated, either in an original Proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation arrangement, composition, readjustment, dissolution, or similar relief.

16.8. Business Day. Any day other than Saturday, Sunday or any legal holiday observed in the State.

16.9. Capital Account. The account maintained for a Member or Assignee determined in accordance with Article VII.

16.10. Capital Contribution. Any contribution of Property, services or the obligation to contribute Property or services made by or on behalf of a Member or Assignee.

16.11. Code. The Internal Revenue Code of 1986, as amended from time to time.

16.12. Commitment. The Capital Contributions that a Member or Assignee is obligated to make.

16.13. Company. RSL RAILROAD, LLC, a Limited Liability Company, formed under the laws of the State of Ohio, and any successor limited liability company.

16.14. **Company Liability.** Any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

16.15. **Company Minimum Gain.** An amount determined by first computing for each Company Non-recourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is equally allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with Section 704 of the Code the Regulations issued thereunder, as the same may be issued and interpreted from time to time. All Member's will share equally the Company Minimum Gain at the end of any Taxable Year equals: the sum of Non-recourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a non-recourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors' in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Non-recourse Liabilities.

16.16. **Company Non-recourse Liability.** A Company Liability to the extent that no Member or Related Person bears the economic risk of loss (as defined in §1.752-2 of the Regulations) with respect to the liability.

16.17. **Company Property.** Any Property owned by the Company.

16.18. **Contributing Members.** Those Members making contributions as a result of the failure of a Delinquent Member to make the contributions required by the Commitment as described in Article VII.

16.19. **Default Interest Rate.** The higher of the legal rate or the then-current prime rate quoted by the largest commercial bank in the jurisdiction of the Principal Office plus three percent.

16.20. **Delinquent Member.** A Member or Assignee who has failed to meet the Commitment of that Member or Assignee.

16.21. **Distribution.** A transfer of Property to a Member on account of a Membership Interest as described in Article VIII.

16.22. **Disposition (Dispose).** Any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).

16.23. Dissociation. Any action which causes a Person to cease to be a Member as described in Article XI hereof.

16.24. Initial Capital Contribution. The Capital Contribution agreed to be made by the Initial Members as described in Article VII.

16.25. Initial Members. Those persons identified on Schedule A attached hereto and made a part hereof by this reference who have executed the Agreement.

16.26. Interest. An Ownership Interest in the Company, including any and all benefits to which the holder of such an Interest may be entitled under this Agreement, together with all the obligations of such Person to comply with the terms and provisions of this Agreement. Each Member's Interest shall, when fully paid, be represented by a Certificate issued by the Manager for the number of "Membership Units" set opposite such Member's name on Schedule A.

16.27. Majority of the Member-Managers. A majority by number of all of the Member-Managers.

16.28. Majority of the Members. All Members will have equal voting rights as identified in ARTICLE VIII and all Members will equally vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Member who has disposed of part or all of that Member's Membership Interest to an Assignee, neither the Sharing Ratio of such Member nor such Assignee shall be considered in determining a Majority of the Members and neither such Member nor such Assignee shall be entitled to vote on such matter.

16.29. Majority of the Remaining Member-Managers. A majority by number of all the Remaining Member-Managers.

16.30. Majority of the Remaining Members. Remaining Members will have equal voting rights as identified in ARTICLE VIII and all Members will equally vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority of Remaining Members. In the case of a Member who has disposed of part or all of that Member's Membership Interest to an Assignee, neither the Sharing Ratio of such Member nor such Assignee shall be considered in determining a Majority of the Members and neither such Member nor such Assignee shall be entitled to vote on such matter.

16.31. Management Right. The right of a Member to participate in the management of the Company, including the rights to information and to consent or approve actions of the Company. The rights and authority of a Member-Manager that exceed those of a Member who is not a Member-Manager are not considered Management Rights for purposes of the Agreement.

16.32. Member-Manager. A Member selected to manage the affairs of the Company under Article VI hereof.

16.33. Member. An Initial Member, Substitute Member or Additional Member, including, unless the context expressly indicates to the contrary, a Member-Manager or Assignee.

16.34. Member Minimum Gain. An amount determined by first computing for each Member Non-recourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with Section 704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time.

16.35. Member Non-recourse Liability. Any Company Liability to the extent the liability is non-recourse under state law, and on which a Member or Related Person bears the economic risk of loss under §1.752-2 of the Code because, for example, the Member or Related Person is the creditor or a guarantor.

16.36. Membership Interest. The rights of a Member or, in the case of an Assignee, the rights of the assigning Member in Distributions (liquidating or otherwise) and allocations of the profits, losses, gains, deductions, and credits of the Company shall be shared equally among the Members as identified in ARTICLE VIII. With respect to any Member, the Percentage Interest set opposite such Member's name on the attached Schedule A. If any Membership Interest is disposed of in accordance with the provisions of this Agreement, the Transferee of such Interest shall succeed to the "Percentage Interest" of such Person's Transferor to the extent it relates to the Transferred Interest. "Percentage Interests" means all of such Interests.

16.37. Money. Cash or other legal tender of the United States, or any obligation that is immediately reducible to legal tender without delay or discount. Money shall be considered to have a fair market value equal to its face amount.

16.38. Net Losses. The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

16.39. Net Profits. The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

16.40. Non-recourse Liabilities. Non-recourse liabilities include Company Non-recourse Liabilities and Member Non-recourse Liabilities.

16.41. Notice. Notice shall be in writing. Notice to the Company shall be considered given when mailed by first class mail postage prepaid addressed to any Member-Manager in care of the Company at the address of Principal Office. Notice to a Member shall be considered given when mailed by first-class mail postage prepaid addressed to the Member at the address reflected in the Agreement unless the Member has given the Company a Notice of a different address.

16.42. Offsettable Decrease. Any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation relates attributable to depletion allowances under §1.704(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or 706 of the Code or under §1.751-1 of the Regulations, or distributions that, as of the end of the year are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during or (prior to) the taxable years in which the such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

16.43. Organization. A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies, and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

16.44. Organization Expenses. Those expenses incurred in the organization of the Company including the costs of preparation of the Agreement and Articles.

16.45. Property. Any property real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

16.46. Permitted Transferee. Any Initial Member (i.e., BAXTER WELLMON, STEVEN P. DIPIETRO, DAVID M. DIPIETRO, AND JOHN D. EISENHAUT), and such initial Member's spouse, natural or adoptive lineal ancestors or descendants, and any Organization wholly owned by or for the sole benefit of one or more of such Persons provided that the business actions of such Organization are principally controlled by the Initial Member.

16.47. Person. An individual, trust, estate, or any incorporated or unincorporated organization permitted to be a member of a limited liability company under the laws of the State.

16.48. Proceeding. Any administrative, judicial, or other adversary proceeding, including, without limitation, litigation, arbitration, administrative adjudication, mediation, and appeal or review of any of the foregoing.

16.49. Regulations. Except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.

16.50. Related Person. A person having a relationship to a Member that is described in §1.752-4(b) of the Regulations.

16.51. Remaining Member-Managers. In the event of a Member-Manager who has any potential conflict of interest or transaction between a Member-Manager and the Company, the Member-Managers not having the potential conflict of interest or participating in the transaction.

16.52. Remaining Members. In the event of the Dissociation of a Member-Manager, all of the Members at the time of such Dissociation other than the Member who has dissociated. In the event of a Member-Manager who has any potential conflict of interest or transaction between a Member-Manager and the Company, the Members not having the potential conflict of interest or participating in the transaction.

16.53. Removal. The act of Remaining Members by which a Member-Manager is removed as a Member-Manager but continues to be a Member.

16.54. Resignation. The act of the Member-Manager by which such Member ceases to be a Member-Manager but continues to be a Member.

16.55. Sharing Ratio. With respect to any Member, a fraction (expressed as a percentage), the numerator of which is the total of the Member's Capital Account and the denominator is the total of all Capital Accounts of all Members and Assignees.

16.56. Substitute Member. An Assignee who has been admitted to all of the rights of membership pursuant to the Agreement.

16.57. Super-Majority of the Members. Members having Sharing Ratios in excess of eighty percent (80%) of all of the Members entitled to vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Member who has disposed of part or all of that Member's Membership Interest to an Assignee, neither the Sharing Ratio of such Member nor such Assignee shall be considered in determining a Majority of the Members and neither such Member nor such Assignee shall be entitled to vote on such matter.

16.58. Taxable Year. The taxable year of the Company as determined pursuant to §706 of the Code.

16.59. Taxing Jurisdiction. Any state, local, or foreign government that collects tax, interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

IN WITNESS WHEREOF, we have hereunto set out hand and seals on the date set forth beside our names.

IN WITNESS WHEREOF, we have hereunto set out hand and seals on the date set forth beside our names.

RSL RAILROAD, LLC

TRANSPORT HANDLING SPECIALISTS, INC.

3-5-13
Date


By: BAXTER WELLMON

3-11-13
Date


STEVEN P. DIPIETRO

3-11-13
Date


DAVID M. DIPIETRO

3-15-13
Date


JOHN D. EISENHUT

SIGNATURE PAGE

Schedule A

<i>MEMBER</i>	<i>DATE</i>	<i>CAPITAL CONTRIBUTION</i>	<i>VALUE OF CAPITAL CONTRIBUTION</i>	<i>OWNERSHIP INTEREST</i>
Manager:				
TRANSPORT HANDLING SPECIALISTS, INC. BY AND THROUGH BAXTER WELLMON	05/01/2012			50%
Members:				
STEVEN P. DIPIETRO	05/01/2012			16.67%
DAVID M. DIPIETRO	05/01/2012			16.67%
JOHN D. EISENHAUT	05/01/2012			16.66%