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Office of Proceedings
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April 21, 2014

VIA E-FILING

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

Re: **STB Docket No. FD 35816**

**Chai Trust Company, LLC, EGI-Fund (14-16) Investors, L.L.C., and
EGI-IPH Investors, L.L.C. – Control Exemption –
Iowa Pacific Holdings, LLC and Permian Basin Railways, Inc.**

PUBLIC VERSION

Dear Ms. Brown:

Attached please find a redacted (public) version of a Unit Purchase and Investment Agreement (the "Agreement") offered as a counterpart to the confidential version of the Agreement submitted under seal as Exhibit B to the original Notice of Exemption filing in the above-referenced proceeding. We are supplying the attached redacted Agreement in response to a request of the Office of Proceedings.

Please contact the undersigned if you have any questions.

Respectfully submitted,



Myles L. Tobin
Attorney for Chai Trust Company, LLC, EGI-Fund (14-16)
Investors, L.L.C., and EGI-IPH Investors, L.L.C.

MLT/ekf

Attachment (1)

UNIT PURCHASE AND INVESTMENT AGREEMENT¹

This Unit Purchase and Investment Agreement (as amended, modified, supplemented or restated in accordance with its terms from time to time, this “**Agreement**”), dated as of March ____, 2014, is by and among (i) Iowa Pacific Holdings, LLC, an Illinois limited liability company (the “**Company**”), (ii) certain members of the Company selling or having their Common Units redeemed pursuant to the terms hereof (the “**Selling Members**” and each a “**Selling Member**”) and (c) IPH Investors, LLC, a Delaware limited liability company (the “**Investor**”). Certain capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto either in the text or in Article XI.

RECITALS

A. The Company owns and operates, either directly or through Subsidiaries, various short line railroads and related businesses in various regions of the United States and the United Kingdom (the “**Business**”).

B. As of the date hereof and prior to the consummation of the transactions contemplated hereby, all of the fully-diluted equity ownership (the “**Common Units**”) of the Company was represented by the Common Units or warrants to acquire Common Units and is set forth on Exhibit 1 attached hereto.

C. Subject to the terms hereof, the Investor will purchase from the Company newly-issued Common Units in an amount equal to the Purchase Price. The proceeds from the Purchase Price, in turn, shall be used as set forth on Exhibit 2 attached hereto. [REDACTED]

[REDACTED]

AGREEMENTS

In consideration of the mutual covenants of the parties set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

SALE AND ISSUANCE OF COMMON UNITS

1.1 Sale and Issuance of Common Units.

(a) Immediately prior to the Closing (as defined below), the Company shall adopt and file with the Secretary of State of Illinois an Amended and Restated Articles of

[REDACTED]

Organization in the form of Exhibit 3 hereto, and the Company, its members and Investor shall enter into an Amended and Restated Operating Agreement in the form of Exhibit 4 hereto (the “**Revised Operating Agreement**”), which shall, among other things, set forth the terms of the Common Units and other rights and preferences.

(b) Subject to the terms and conditions of this Agreement, at the Closing, the Company agrees to sell and issue to Investor free and clear of all Liens, and the Investor agrees to purchase at a purchase price of \$ [REDACTED] per Common Unit (the “**Purchase Price**”), an aggregate number of Investor Units equal to an aggregate Purchase Price of [REDACTED]. After giving effect to the Redemption, the Investor Units shall equate to [REDACTED]% of all Common Units issued and outstanding immediately after the Closing (and prior to giving any effect to the issuance or vesting of any Profits Interests or Unit Options).

(c) The payment of the Purchase Price by the Investor at Closing shall be as follows (the “**Cash Consideration**”):(i) \$ [REDACTED] shall be paid to the Escrow Account to be held by the Escrow Agent pursuant to the terms of an Escrow Agreement for purposes of securing any claims for Losses under Article VIII and released [REDACTED] year after the date hereof (except to the extent previously released to pay Losses or with respect to pending claims for Losses) and (ii) the balance of [REDACTED] shall be paid at Closing to Company.

(d) The proceeds from the Purchase Price shall be used immediately by the Company at Closing to make the payments of the Redemption Price set forth on Exhibit 2 (the “**Redemption Price**”) to the Selling Members as set forth thereon (the “**Redemption**”),² and the full payment and discharge of the [REDACTED] as well as the Member Notes (collectively, the “**Payoff**”). After giving effect to the payment of the Purchase Price and issuance of Common Units to the Investor, the Redemption, the Payoff and other transactions contemplated herein, the fully-diluted ownership of Common Units shall be as set forth on Exhibit B to the Revised Operating Agreement.

1.2 Transfer Taxes. Notwithstanding anything to the contrary in this Agreement or under GAAP, all stamp or other sales, recording, transfer or transaction Tax (collectively, the “**Transfer Taxes**”) imposed under the laws of the United States or any state, county, municipality or other subdivision thereof on the direct or indirect contribution and transfer of the Common Units to Investor or Redemption thereof shall be borne by the Company and either paid prior to Closing or accrued as an item of Net Working Capital.

ARTICLE II

CLOSING

2.1 Closing.

(a) Subject to the conditions set forth herein, the consummation of the matters contemplated in Article I (collectively, the “**Transactions**”) shall occur (the “**Closing**”) at the

■ [REDACTED]

offices of Gould & Ratner LLP, 222 N. LaSalle Street, Chicago, Illinois 60601, at 10:00 a.m. Chicago time on the fifth business day following the date on which all of the conditions to each party's obligations hereunder have been satisfied or waived in writing (other than conditions to be satisfied at the Closing itself), or such other time, place and manner as the Investor and Company may mutually agree upon in writing (the "**Closing Date**"). In lieu of a physical Closing, the parties may agree to exchange all documents and instruments by any other means including pdf (with original follow up), electronic, facsimile or any other means.

(b) At the Closing, in addition to the other deliveries contemplated in Article VII or as otherwise may be reasonably agreed to by and among the parties:

(i) The Investor shall contribute to the Company the Cash Consideration in the manner as contemplated in Section 1.1(c);

(ii) The Investor shall deliver the Escrow Amount to the Escrow Agent by wire transfer of immediately available funds for deposit into an interest-bearing escrow account established pursuant to the terms of the Escrow Agreement as contemplated in Section 1.1(c);

(iii) The Investor shall receive the Investor Units, free and clear of all Liens;

(iv) The Company shall effectuate the Redemption of the Selling Members in the amount of \$ [REDACTED], the proceeds of which distribution shall in turn be distributed to the Selling Members as set forth on Exhibit 1. The Redeemed Units shall be assigned back to the Company, free and clear of all Liens, Redemption Price paid to the Selling Members, and receive all necessary assignments separate from certificate (if any), assignments of Common Units, and such other documents deemed necessary or desired by Company or Investor to carry out the Redemption;

(v) The Company shall make the Initial Borrowing;

(vi) The Company shall make the Payoffs pursuant to payoff letters, purchase agreements (including all requisite signatures), releases and such other normal and customary documentation that shall have been delivered at least three days prior to the Closing Date, in form satisfactory to the Investor (collectively, the "**Payoff Letters**") and receive full unconditional releases in a form satisfactory to the Company and Investor. Not in limitation of the foregoing, (A) [REDACTED]

[REDACTED]

(vii) The Company shall adopt an "Equity Incentive Plan" as contemplated in the Revised Operating Agreement and shall have received "Restricted Unit Agreements" or comparable documentation with the recipients of the Profits Interests or Unit Options granted;

(viii) The Company, its members and Investor shall execute the Revised Operating Agreement;

(ix) The deliveries contemplated in Article VII shall have occurred or been waived or deemed waived; and

(x) Such other documents, instruments and items (such as certificates of good standing of the Company and Subsidiaries, member and board resolutions of the Company and other normal and customary items reasonably requested or required by Investor) shall have been received.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF EACH SELLING MEMBER

As a material inducement to the Investor to enter into this Agreement, each Selling Member, severally and solely with respect to its own respective Common Units, and not jointly, represents and warrants to the Investor as follows:

3.1 Authorization. Such Selling Member has the legal capacity, power and authority (including, if applicable, full organizational power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. All actions or proceedings to be taken by or on the part of such Selling Member to authorize and permit the execution and delivery by such Selling Member of this Agreement and the instruments required to be executed and delivered by it pursuant hereto, the performance by such Selling Member of its obligations hereunder and the consummation by such Selling Member of the transactions contemplated hereby, have been duly and properly taken. This Agreement has been duly executed and delivered by such Selling Member and constitutes the legal, valid and binding obligation of such Selling Member, enforceable against such Selling Member in accordance with its terms.

3.2 Title to Units. Such Selling Member is the sole record and beneficial owner of, and has good and valid title to, the Common Units set forth opposite such Selling Member's name on Exhibit 1, free and clear of any Lien, except for restrictions on transfer (a) contained in the Existing Operating Agreement and that will be satisfied on or before Closing, or (b) imposed by applicable securities laws. Such Selling Member is not party to any option, warrant, purchase right or other contract or commitment that requires such Selling Member to sell, transfer or otherwise dispose of any membership interest of the Company, except for this Agreement and the Existing Operating Agreement.

3.3 No Violation or Approval. The execution, delivery and performance by such Selling Member of this Agreement and the consummation by such Selling Member of the transactions contemplated hereby will not result in a breach or violation of, or a default under, (a) any statute applicable to such Seller, (b) any agreement to which such Selling Member is a party or by which such Selling Member or any of such Selling Member's Common Units or other assets is bound, or (c) any order, judgment, decree, rule or regulation of any court or any governmental agency or body having jurisdiction over such Seller or any of such Selling Member's Common Units or other assets. No consent, approval, order or authorization of, or

filing with, any governmental authority or entity or any other party is required of such Selling Member in connection with the execution and delivery by such Seller of this Agreement or the consummation of any of the transactions contemplated hereby, or any consent where the failure of such Selling Member to obtain such consent would not materially and adversely affect the Selling Member's ability to consummate the Closing hereunder in accordance with the terms and conditions of this Agreement or otherwise prevent such Selling Member from performing in all material respects any of its obligations under this Agreement.

3.4 Litigation. As of the date hereof, there is no action, suit or proceeding against, or to the knowledge of such Selling Member threatened against or affecting, such Selling Member or its properties, assets or business, before any court or arbitrator or any Governmental Body, that in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated hereby.

3.5 Brokers. Selling Member did not directly or indirectly engage the services of any broker or finder in connection with the transactions contemplated by this Agreement and to Selling Member's knowledge, neither the Company nor any of its Subsidiaries has any liability for any brokerage or finder's fee in connection with the transactions contemplated by this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND SELLING MEMBERS

As a material inducement to the Investor to enter into this Agreement, the Company and each Selling Member, severally only (but not jointly with Company or any other Selling Member and, with respect to each Selling Member, only up to his/her Allocable Portion), each represents and warrants to the Investor as follows:

4.1 Organization and Qualification of the Company and each Subsidiary. The Company and each of its Subsidiaries are each duly formed or organized (as the case may be), validly existing and in good standing as a limited liability company or corporation (as the case may be) under the laws of the states set forth on Schedule 4.1. The Company and each of its Subsidiaries each has the requisite power and authority required to own and lease its property and to carry on its business as presently conducted. The Company and each of its Subsidiaries do not conduct or transact any business or own or lease any property in any jurisdiction other than the states set forth on Schedule 4.1 and is duly qualified in each of those states. The Company has previously delivered to the Investor complete and correct copies of its and each of its Subsidiaries' Organizational Documents.

4.2 Power and Authority; Authorization; Due Execution and Binding Effect. The Company has the requisite legal capacity, power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, to consummate the Transactions and to perform its obligations under this Agreement and the Transaction Documents to which it is a party. The execution and delivery of this Agreement and the Transaction Documents to which the Company is a party, and the performance by the Company

of its obligations hereunder and thereunder, have been duly authorized by all necessary limited liability company action. This Agreement and the Transaction Documents to which the Company is a party have been duly and validly executed and delivered by the Company. This Agreement and the Transaction Documents to which the Company is a party will constitute, upon such execution and delivery hereof, the valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by applicable Insolvency Laws.

4.3 Capitalization; Subsidiaries; Officers and Directors.

(a) All of the authorized and outstanding equity interests in the Company are owned by the members of the Company in the amounts set forth opposite their respective names on Schedule 4.3(a) attached hereto, free and clear of any Liens whatsoever [REDACTED]

[REDACTED] The Company, in turn, directly or indirectly owns all of the equity interests of each of its Subsidiaries as set forth on Schedule 4.3, except as otherwise provided in Schedule 4.3. There are no preemptive, conversion, subscription or other rights, options, warrants or agreements granted or issued by, or binding upon, the Company, any of its members or Subsidiaries for the purchase or acquisition of any equity interests in the Company or any of its Subsidiaries except for [REDACTED]

[REDACTED] Neither the Company nor any of its Subsidiaries has any equity appreciation rights, phantom equity plan or similar rights outstanding.

(b) Neither the Company (except for its ownership interests of its Subsidiaries) nor any of its Subsidiaries owns, directly or indirectly, any stock, partnership interest, limited liability company interest, joint venture interest or other equity interest in any Person.

[REDACTED]

[REDACTED] True and complete copies of all stockholder, operating and similar governance agreements relating to the formation, governance and operations of each of its Subsidiaries have been provided to Investor and such documents are in full force and effect with no defaults or breaches thereof.

(d) True and correct copies of the purchase agreements for all prior acquisitions of and divestitures of Subsidiaries and operating divisions have been delivered to Investor. No material defaults or breaches on any such agreements have occurred. All escrow amounts and the terms thereof relating to any such acquisitions or divestitures are set forth on Schedule 4.3(d).

(e) True and correct copies of the purchase agreements for all prior acquisitions of and sales of equity interests in the Company or any of its Subsidiaries have been delivered to Investor. Such sales have complied with all applicable Law. [REDACTED] no claim has been made by any such purchaser or seller of equity interests in the Company or any of its Subsidiaries with respect to the breach or default of the sale agreement or any misrepresentation or other securities law violation.

(f) Schedule 4.3(f) is a true and complete list of all of the officers and members of the board of directors or managers of the Company and each of its Subsidiaries and all compensation paid to each of such officers and directors or managers (in their capacities as such) during the years 2009 through the present.

(g) Schedule 4.3(g) sets forth the owners of the UK Entity, the Subsidiaries of the UK Entity together with all other owners thereof, and the officers and directors or managers of the UK Entity. For the avoidance of doubt, all representations and warranties as well as all disclosures required to be made by or with respect to any Subsidiary in this Article IV and all covenants and agreements that the Company can enforce with respect to any Subsidiary includes the UK Entity and its Subsidiaries.

4.4 No Conflict. Except as set forth on Schedule 4.4, and assuming compliance with the notification requirements of the STB and under the HSR Act and otherwise with respect to the Required Governmental Consents, neither the execution and delivery of this Agreement by the Company nor the performance by it of the Transaction or its obligations under the Transaction Documents will, directly or indirectly:

(a) contravene, conflict with, or result in (with or without notice or lapse of time) a violation or breach of (i) any provision of the Organizational Documents of the Company, (ii) any resolution adopted by the Company's members as the sole holders of all of the equity interests of the Company, or (iii) any Legal Requirement, Governmental Authorization, Contract or any Order to which the Company may be subject or related to the Business or the Assets, except as provided otherwise in Schedule 4.4;

(b) give any Person or Governmental Body the right (with or without notice or lapse of time) to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, modify, withdraw or suspend any Contract, Legal Requirement, Governmental Authorization or Order to which the Company may be subject or related to the Business or the Assets; or

(c) result in (with or without notice or lapse of time) the imposition or creation of any Lien upon or with respect to any of the Assets.

4.5 No Consent Required. Except (i) as set forth in Schedule 4.5 (which includes the Required Contract Consents), (ii) filings required under the HSR Act and (iii) the Required Governmental Consents, no Consent is required to be made or obtained by the Company in connection with the authorization, execution, delivery, performance or lawful completion of this Agreement, the Transaction Documents or the Transaction.

4.6 Financial Statements.

(a) Attached as Schedule 4.6-1 hereto are the following financial statements of the Company (including each of its Subsidiaries), accompanied by the related reviewed reports thereon of the Companies' independent auditors (collectively, the "**Audited Financial Statements**"):

(i) the audited consolidated and consolidating balance sheets for the Company (including each of its Subsidiaries) as of December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012 and December 31, 2013³;

(ii) the audited statements of operations for the Company (including each of its Subsidiaries) for the twelve month periods ended December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012 and December 31, 2013; and

(iii) the audited cash flow statements for the Company (including each of its Subsidiaries) for the twelve months ended December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012 and December 31, 2013.

Notwithstanding the foregoing, the Audited Financial Statements for the twelve-month period ending on December 31, 2013 are drafts only and are subject to change. Company shall provide Investor with final versions of these Audited Financial Statements as soon as they are completed.

(b) Attached as Schedule 4.6-2 hereto are the following unaudited financial statements of the Company and each of its Subsidiaries on a consolidated and consolidating basis (collectively, the "**Interim Financial Statements**"):

(i) the unaudited balance sheet for the Company (including each of its Subsidiaries) as of February 28, 2014; and

(ii) the unaudited statement of income and cash flow for the Company (including each of its Subsidiaries) for the two (2) month fiscal period ended February 28, 2014.

(c) Except as set forth on Schedule 4.6-3, each of the Financial Statements is consistent with the books and records of the Company (including each of its Subsidiaries) and fairly reflects in all material respects the financial condition, results of operations and cash flows of the Company (including each of its Subsidiaries) as of the date and for the periods related thereto and have been prepared in accordance with GAAP applied on a consistent basis (except, in the case of the Interim Financial Statements, for the absence of footnote disclosure and normal and immaterial year-end adjustments) throughout the periods covered thereby and the Financial Statements disclose all material liabilities, direct or contingent, of the Company (including each of its Subsidiaries) as of the dates thereof as required to be disclosed by GAAP. The books and records of the Company (including each of its Subsidiaries) are accurate and complete in all

material respects and fairly and accurately present and reflect in all material respects all of the transactions described therein.

4.7 Internal Controls; Complaints.

(a) Internal Controls. The Company and each of its Subsidiaries (on a consolidated basis) maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP. The Company and each of its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action has been taken and will continue to be taken with respect to any differences. Schedule 4.7(a) lists, and the Company has made available to Investor complete and correct copies of all written descriptions of, and all policies, manuals, and other documents promulgating, such internal controls.

(b) Complaints. Since the Latest Balance Sheet Date, to Company's Knowledge, neither the Company nor any of its Subsidiaries nor any director, officer, employee, auditor, accountant or representative of the Company or any of its Subsidiaries, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion, or claim, whether made in writing or made orally to any director, executive officer, or inside legal counsel or outside legal counsel to the Company or any of its Subsidiaries, regarding the accounting or auditing practices, procedures, methodologies, or methods of the Company or any of its Subsidiaries or their respective internal accounting controls, including any complaint, allegation, assertion, or claim that any of the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices.

4.8 Absence of Liabilities. As of the Closing Date, neither the Company nor any of its Subsidiaries will have any Liabilities, other than those Liabilities (i) arising since the date hereof in the ordinary course of the Business consistent with past practices with unrelated parties, (ii) set forth on the financial statements set forth in Section 4.6 as updated to the Closing, (iii) under Contracts and Leases disclosed or not required to be disclosed and (iv) specifically set forth on Schedule 4.8.

4.9 Personal Property.

(a) Title. The Company and its Subsidiaries possess good and marketable, indefeasible title to, or the right to use, the Assets, free and clear of all Liens except for the Liens set forth on Schedule 4.9(a). The Company or each respective Subsidiary has the exclusive right to possess and convey and is vested with, good and marketable title and interest in all of its personal property set forth in the Audited Financial Statements and other statements referred to in Section 4.6 hereof together with all other assets, excluding real property, used or useful in its business, including, without limitation, all contracts, leases, agreements, intellectual property rights, litigation rights, claims and all other rights and assets owned by the Company, free and

clear of all Liens (the “**Assets**”). The Assets constitute all of the personal property used in connection with the conduct of the Business and, together with the Real Property, are sufficient to conduct the Business as presently conducted and as conducted in the previous twelve (12) months. Not in limitation of the foregoing, the Company and Subsidiaries hold sufficient indefeasible property interests and indefeasible operating rights in and to the rail lines depicted on the maps referenced in Schedule 4.9, and to the adjacent yards, spur tracks, and other rail facility appurtenances thereto (collectively, the “**Rail Facilities**”) to permit the Company and Subsidiaries to conduct rail freight and passenger operations on and over the Rail Facilities as such operations are currently conducted by the Company and Subsidiaries, except as provided in Schedule 4.9(a). The individual parcels of land that constitute the Rail Facilities of each line are contiguous to each other, with no gaps or strips, from one end point of each line to the other end point of each such line. All assets subject to capital leases are set forth on Schedule 4.9(a).

(b) Condition and Location. Substantially all of the tangible assets that are part of the Assets are in good operating condition and are useable in the ordinary course of business consistent with past custom and practice. There is no material tangible asset or material portion of the tangible assets which are part of the Assets that requires any material repair or replacement in excess of an overall repair or replacement budget for the Company and Subsidiaries of \$____. No property owned or leased by any member of the Company or Affiliate thereof used in connection with the operation of, or related to, the Business is located other than on the Company or its Subsidiaries’ property except in the ordinary course of business.

(c) Tangible Assets. Schedule 4.9(c) contains a true and complete list of all of the material tangible assets that are used in connection with the operation of, or related to, the Business, other than the Real Property listed on Schedules 4.11(a) and 4.11(b) and the Rail Facilities listed on Schedule 4.9(a). These Assets include, without limitation, all rolling stock (active, listed as active but currently stored, and units held for future service), passenger cars (separated by type of passenger car and listed by mark, number and name), and freight car roster (listed by number and description).

4.10 Compliance with Laws; Governmental Authorizations.

(a) Except as set forth on Schedule 4.10(a):

(i) To Company’s Knowledge, the Business has been operated in all material respects in compliance with each Legal Requirement that is or was applicable to the Business;

(ii) To Company’s Knowledge, no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation in any material respect by the Business of, or a failure on the part of the Business to comply in any material respect with any Legal Requirement applicable to the Business; and

(iii) neither the Company nor any of its Subsidiaries has received any notice or other communication from any Governmental Body or any other Person regarding, and, to Company’s Knowledge, there does not exist any violation in any material respect of, or failure to comply in any material respect with, any Legal Requirement.

(b) Schedule 4.10(b) contains a complete and accurate list of each Governmental Authorization that is necessary to permit the Company and each of its Subsidiaries to lawfully conduct and operate the Business in the manner in which the Business is currently conducted and permits the Company and each of its Subsidiaries to own and use the Assets in the manner in which the Company and each of its Subsidiaries currently owns and uses the Assets (the “**Company Governmental Authorizations**”). The Company and each of its Subsidiaries possesses each Company Governmental Authorization. Each Company Governmental Authorization is valid and in full force and effect and, to Company’s Knowledge, there is no default or breach thereof by Company or any of its Subsidiaries. All applications required to have been filed for the renewal of the Company Governmental Authorizations have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Company Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

(c) Schedule 4.10(c) sets forth all filings, consents and approvals (the “**Required Governmental Consents**”) necessary to validly assign and transfer all of the Company Governmental Authorizations to the Company and each of its Subsidiaries and no Company Governmental Authorization is subject to termination or modification as a result of the authorization, execution, delivery, performance or lawful completion of this Agreement or the Transaction.

4.11 Real Property.

(a) Owned Property. All real property (including without limitation fee simple title and all easements and other rights of way) (“**Owned Real Property**”) owned by the Company or any of its Subsidiaries is set forth on Schedule 4.11. Such Schedule also sets forth the identity of the owner, and location thereof. The Company and each of its Subsidiaries do not, as a lessor, lease any Owned Real Property except as set forth in Schedule 4.11. The Company and each of its Subsidiaries has good and marketable fee simple title to the Owned Real Property, free and clear of all Liens, except for Permitted Liens and the Liens set forth in Schedule 4.11. With respect to the Owned Real Property:

(i) The Company and each of its Subsidiaries as applicable has all material Governmental Authorizations, material easements and rights necessary to conduct the Business thereon and, to Company’s Knowledge, there are no violations of such Governmental Authorizations, easements and rights;

(ii) No portion of the Owned Real Property is subject to any pending condemnation or other proceeding by any public or quasi-public authority and, to Company’s Knowledge, there is no Threatened condemnation or other Proceeding with respect thereto;

(iii) Except as set out in Schedule 4.11(a)(iii), the physical condition of the Owned Real Property and the buildings, plants, improvements, structures, and fixtures located at or affixed to the Owned Real Property is sufficient, in all material respects, to operate the Business as currently operated, and, to Company’s Knowledge, are not in violation in any material respects of any material ordinances, laws, codes or regulations that are applicable to railroads (excluding Environmental Laws) or any covenants, restrictions or other documents of

record, nor has any written notice of any claimed violation of any such ordinances, laws, codes or regulations or any covenants, restrictions or other documents of record been served on the Company and each of its Subsidiaries;

(iv) Since December 31, 2013, no written notice of any increase in the assessed valuation of the Owned Real Property and/or no notice of any contemplated special assessment has been received by the Company or any of its Subsidiaries;

(v) To Company's Knowledge, the Owned Real Property is being operated in compliance in all material respects with all applicable requirements of all Governmental Bodies, including, but not limited to, any building laws and codes (excluding Environmental Laws), and neither the Company nor any of its Subsidiaries has received notice of any violation thereof;

(vi) The Owned Real Property is not subject to any roll-back tax, dual or exempt valuation tax, nor does it contain any omitted parcel;

(vii) All taxes on the Owned Real Property have been paid through the Closing Date or accrued as an item of Net Working Capital;

(viii) None of the Owned Real Property has been abandoned, condemned, subject to prescriptive easement claims or otherwise used by any third persons except pursuant to existing contracts;

(ix) To the Company's Knowledge, there are no encroachments upon or over or violations of easements or open space, conservation, buffer or other similar areas or building setback lines located or existing upon the Owned Real Property;

(x) Neither Company nor any of its Subsidiaries has received any notice of cancellation of any current Insurance Policies insuring the Owned Real Property;

(xi) Neither Company nor any of its Subsidiaries has received any notice from their current insurers requiring or requesting any alterations of any improvements to the Owned Real Property;

(xii) To the extent there are any existing surveys in the possession of Company of any Owned Real Property, such survey does not disclose any material survey defect or encroachment upon or over or violation of easements or open space, conservation, buffer or other similar areas or building setback lines on, from or onto the Owned Real Property which have not been cured or insured over prior to the Closing; and

(xiii) The Company has provided to the Investor true copies of all recorded documents shown on any existing title policies or title commitments in the possession of Company and all other documents referred to in such recorded documents and all unrecorded Material Contracts in the possession of Company affecting the Owned Real Property.

(b) Leased Property. Schedule 4.11(b) constitutes a correct and complete list, and a brief description of, all real estate used, leased or occupied (other than the Owned Real

Property) by the Company or any of its Subsidiaries, and all facilities thereon. The Company or such applicable Subsidiary has valid and enforceable leasehold interests in all of the real property held under leases described in Schedule 4.11(b) (collectively, the “**Leased Property**,” and together with the Owned Real Property, the “**Real Property**”), in each case free and clear of all Liens (other than Permitted Liens). The Real Property constitutes all of the real property currently used or occupied by the Company and each of its Subsidiaries in connection with the Business. With respect to the Leased Property:

(i) the Company has provided the Investor with a true and complete copy of each of the leases pertaining to the Leased Property (the “**Leases**”). Except for any validly executed written amendments (copies of which have been provided to the Investor), the Leases have not been amended, modified or assigned, are being fully performed by the Company or the applicable Subsidiary and are in full force and effect. There has been no breach, default, termination, surrender or similar action (nor any written notice of any thereof) regarding the Leases;

(ii) the Company or the applicable Subsidiary has the benefit of all easements, Licenses and other rights granted to them necessary to conduct the Business thereon and, to Company’s Knowledge, there are no violations of such easements, Licenses and rights;

(iii) (A) no portion thereof is subject to any pending or threatened condemnation proceeding and (B) to Company’s Knowledge, there is no threatened condemnation or proceeding with respect thereto;

(iv) Except as set out in Schedule 4.11(b)(iv), the physical condition of the Leased Property and the buildings, plants, improvements, structures and fixtures, included in the Assets located at or affixed to such Leased Property are sufficient, in all material respects, to operate the Business as currently operated, and, to Company’s Knowledge, are not in violation in any material respects of any material ordinances, laws, codes or regulations that are applicable to railroads (excluding Environmental Laws) or any covenants, restrictions or other documents of record, nor has any written notice of any claimed violation of any such ordinances, laws, codes or regulations or any covenants, restrictions or other documents of record been served on the Company or any of its Subsidiaries;

(v) since December 31, 2013, no notice of any increase in the assessed valuation of the Leased Property or no notice of any contemplated special assessment has been received by the Company or any of its Subsidiaries;

(vi) the Leased Property is being operated in material compliance with all applicable requirements of Governmental Authorities, including, but not limited to, any building laws and codes (excluding Environmental Laws), and the Company has not received notice of any violation thereof; and

(vii) all taxes on the Leased Property have been paid through the Closing Date.

4.12 Contracts.

(a) Schedule 4.12(a) is a true, correct and complete list of all material Contracts necessary for the conduct of the Business (collectively, the “**Material Contracts**”) to which the Company or any of its Subsidiaries is party or by which the Business is bound, including, but not limited to, any such item that:

(i) provides for future receipt of, or payment by, the Company and each of its Subsidiaries of more than [REDACTED] including, but not limited to, all such Contracts that are (x) Contracts for capital expenditures and (y) employment, consulting or severance Contracts;

(ii) is with one or more of the Major Customers or Major Suppliers;

(iii) prohibits the Company or any of its Subsidiaries from freely engaging in any business or competing anywhere in the world, including any nondisclosure or confidentiality agreement, any non-competition, settlement, co-existence or similar contract that restricts the geographic or operational scope of the Business or the ability of the Business to enter into any new line of business, any right of first offer or first refusal with respect to the sale, license or other disposition of any asset, any division or any business of the Company or any of its Subsidiaries, or any contract prohibiting the Business from granting any rights or conducting any business or that otherwise restricts the Business’ activities or the use of any Proprietary Rights;

(iv) relates to currently unpaid Indebtedness, including any guarantee thereof;

(v) is a license (whether as a licensor or licensee) or similar agreement permitting the use of any Proprietary Rights (other than Commercial Software);

(vi) involves the sharing of profits, losses, costs or liabilities by the Company or any of its Subsidiaries with any other Person in a joint venture, partnership or similar agreement;

(vii) involves hedging or similar transactions;

(viii) grants a power of attorney on behalf of the Company or any of its Subsidiaries;

(ix) involves maintenance and operation of the tracks, yards, and other facilities, including all spur track agreements, switching agreements, maintenance agreements, car lease agreements, car storage agreements, car storage joint venture agreements, supply agreements, handling line agreements, commercial or marketing agreements, hauling agreements, industry track agreements, intercarrier agreements, track leases, and customer agreements respecting the Business (except for spot orders less than [REDACTED]);

(x) involves any investment or capital contribution in any Person or advance or loan to any Person by the Company or any of its Subsidiaries or requires or obligates

the Company or any of its Subsidiaries to make any investment in, or advance, loan or capital contribution to, any Person;

(xi) is a Lease;

(xii) is an agreement pursuant to which (i) the Company or any of its Subsidiaries leases, holds or otherwise uses any machinery, equipment, vehicle or other tangible personal property owned by any third Person for an annual rent in excess of [REDACTED] or (ii) the Company or any of its Subsidiaries is the lessor of, or makes available for use by any third Person, any tangible personal property owned by it for an annual rent in excess of [REDACTED]

(xiii) provides for the supply of goods or services to a Governmental Body and having a term greater than twelve months;

(xiv) are vendor supply contracts (fuel, uniforms, safety equipment, tech support, consulting, utilities, financial services etc.) and having a term greater than twelve months;

(xv) is a shipping or receiving contract;

(xvi) relates to carloads;

(xvii) trackage rights agreements on Company or its Subsidiaries lines and lines of other railroads;

(xviii) is a sales representative, distributor, dealer, advertising, consultant, independent contractor, lobbying, manufacturer's representative, franchise, agency or similar agreement and having a term greater than twelve months;

(xix) relates to the employment of any officer, individual employee or other Person on a full-time, part-time, consulting or other basis: (A) providing annual cash or other compensation in excess of [REDACTED] (B) providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated hereby; (C) providing any severance benefits or making any severance arrangements including any change in control, retention or stay bonuses and similar payments; or (D) restricting its ability to terminate the employment of any employee at any time for any lawful reason or for no reason without penalty or liability;

(xx) relates to the acquisition or disposition of any assets of the Company or any of its Subsidiaries (whether by merger, sale of membership interests or stock, sale of assets or stock or otherwise);

(xxi) relates to the acquisition or disposition of any stock or membership or other ownership interests in the Company or any of its Subsidiaries;

(xxii) utility or fiber optic agreements; or

(xxiii) is not of the foregoing type and is material to the conduct of the Company or any of its Subsidiaries.

(b) The Company has delivered to the Investor complete and correct copies (or forms thereof, where form agreements are used; provided that any and all material deviations or changes to the forms in any individual case are described on Schedule 4.12(b)) of all Material Contracts, including all amendments, waivers and other modifications thereof. The Material Contracts constitute all of the material Contracts used or entered into in connection with the operation of, or related to, the Company or any of its Subsidiaries.

(c) Except as set forth on Schedule 4.12(c), all of the Material Contracts are in full force and effect and are valid and enforceable in all respects in accordance with their terms and, to the Company's Knowledge, are not subject to any claims, charges, set-offs or defenses except with respect to applicable Insolvency Laws and equitable principles generally, and, to the Company's Knowledge, no event has occurred or circumstance exists that would give any Person (including the Company) the right (with or without notice or lapse of time) to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any such Material Contract.

(d) There are no pending renegotiations of any of the Material Contracts except as set forth in Schedule 4.12(d), and all new contracts which are being actively negotiated, or which are otherwise the subject of a letter of intent or similar document, and which would be required to be listed as a Material Contract if such negotiation or letter of intent (or similar document) was complete or consummated as of the Closing Date, are listed on Schedule 4.12(d).

(e) The Company enjoys peaceful and undisturbed possession of all leased personal or movable property under the leases therefor, and all of such leases are valid and in full force and effect and are enforceable against the Company and against all other parties thereto except with respect to Insolvency Laws and equitable principles generally. Neither the Company nor any other party thereto is in default under any of such leases and, to Company's Knowledge, no event has occurred which with the giving of notice or the passage of time or both could constitute a default under any of such leases.

(f) Schedule 4.12(f) sets forth all filings, consents and approvals (the "**Required Contract Consents**") necessary so that the consummation of the transactions contemplated by this Agreement does not violate, contravene or invalidate any of the Material Contracts.

(g) Except as set forth on Schedule 4.12(g), no Material Contract is subject to termination, modification (including any changes, modifications or alterations to any of the terms of any Material Contract arising by operation of any provisions of any such Material Contract) or acceleration as a result of the consummation of the Transaction.

4.13 Proprietary Rights.

(a) The Company and each of its Subsidiaries owns, or is licensed, or otherwise possesses legally enforceable rights, to use, sell or license, as applicable, all material

Proprietary Rights used, sold or licensed in connection with the Business (collectively, the “**Company Proprietary Rights**”). Schedule 4.13(a) contains a complete and correct list of all of the Company and its Subsidiaries’: patents and patent applications; trademark and service mark registrations and registration applications; domain name registrations; copyright registrations and registration applications; and all material computer software owned or used by the Company and each of its Subsidiaries (excluding Commercial Software), including, where applicable, the name of the registered owner or applicant (as relevant), date of registration or application and name of registration body where the registration or application was made. The Company has delivered to the Investor correct and complete copies of all such patents, registrations and applications and has made available to the Investor correct and complete copies of all written documentation evidencing ownership and prosecution (if applicable) of each such item. All renewal and maintenance fees in respect of the items listed on Schedule 4.13(a) (if applicable) have been duly paid. The Company has licenses for all Commercial Software used in the Business. Use of such Commercial Software is in accordance with such licenses and the Company nor any of its Subsidiaries does not have any obligation to pay fees, royalties and other amounts at any time pursuant to any such license, including by virtue of Company or any of its Subsidiaries’ current usage thereof.

(b) Schedule 4.13(b) sets forth a complete list of all (excluding Commercial Software) licenses, sublicenses and other agreements as to which the Company or any of its Subsidiaries is a party (as licensor, licensee or otherwise) and pursuant to which the Company or any other Person is authorized to use, sell, distribute or license any Proprietary Rights. The Company has delivered to the Investor correct and complete copies of all such licenses, sublicenses and agreements (as amended to date). The Company and each of its Subsidiaries is not in violation, in any material respect, of any such license, sublicense or agreement, and each item of Company Proprietary Rights will, immediately subsequent to the Closing hereunder, continue to be owned or available for use or distribution by the Company and each of its Subsidiaries on such terms as are identical to those pursuant to which Company and each of its Subsidiaries, immediately prior to the Closing, owns or has the right to use or distribute such item. The Company and each of its Subsidiaries does not develop, distribute, sell, resell, license to any Person or sublicense to any Person any software, whether such software is owned by the Company or any of its Subsidiaries or any third party.

(c) Except for Commercial Software, (i) the Company and each of its Subsidiaries is the sole and exclusive owner of the Company Proprietary Rights (free and clear of any Liens), (ii) the Company or any of its Subsidiaries is not obligated to pay any continuing fees, royalties or other compensation or consideration to any third party with respect to any such Company Proprietary Rights, and (iii) all such Company Proprietary Rights were developed, created and designed by employees of the Company or any of its Subsidiaries acting within the scope of its employment (and the Company and each of its Subsidiaries has obtained any and all necessary assignments of Proprietary Rights from such employees) or by consultants or contractors who have assigned to the Company all Proprietary Rights arising from the services performed for Company and each of its Subsidiaries by such persons and all work product associated therewith. None of the Company or any of its Subsidiaries or the Company Proprietary Rights has infringed upon, misappropriated or otherwise violated, and is not currently infringing upon, misappropriating or otherwise violating, any Proprietary Right of any other Person, and there are no actual or, to the best of the Company’s Knowledge, threatened

claims or assertions against the Company or any of its Subsidiaries relating to any claim of infringement or other violation of any Proprietary Right of any Person. To Company's Knowledge, none of the Company Proprietary Rights are being infringed, misappropriated or otherwise violated by any other Person, including by any employee or former employee of the Company or any of its Subsidiaries.

4.14 ERISA.

(a) Schedule 4.14(a) lists all Employee Benefit Plans.

(b) The Company has delivered complete and correct copies to the Investor of: (i) each written retirement (but not healthcare or medical related) Employee Benefit Plan, as amended to the Closing, together with all required financial statements and actuarial reports for the three (3) most recent plan years, if any; (ii) the most recent and any other determination letter, ruling or material notice issued by any Governmental Body with respect to such plan; (iii) the Form 5500 Annual Report (or evidence of any applicable exemption) for the three (3) most recent plan years to the extent such forms are required for any retirement (but not healthcare or medical related) Employee Benefit Plan; (iv) the most recent summary plan description and any summary of material modifications thereto which relates to any such plan; and (v) each other document, explanation or communication which describes any relevant aspect of any such plan that is not disclosed in previously delivered materials. Neither Company nor any of its Subsidiaries has any unwritten Employee Benefit Plan.

(c) Each Employee Benefit Plan: (i) has been in compliance and currently complies in form and in operation with all applicable requirements of ERISA, the STB and related administrative agencies like the Federal Railway Administration, the Code or any other applicable law, and has been operated in accordance with its terms; and (ii) has been and is operated and funded in such a manner as to qualify, where appropriate, for both U.S. Federal and state purposes, for income tax exclusions to its participants, tax-exempt income for its funding vehicle, and the allowance of deductions and credits with respect to contributions thereto.

(d) Except as set forth on Schedule 4.14(d), all of the Company, its Subsidiaries and their ERISA Affiliates' "employee benefit plans" (as defined in Section 3(3) of ERISA) are either (i) a "multiemployer plan" as defined in Section 3(37) or 4001 of ERISA, (ii) a "multiple employer plan" within the meaning of Section 413(c) of the Code, (iii) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA or (iv) subject to Section 302 or Title IV of ERISA or Section 412 of the Code.

(e) There are no actions, suits, investigations or claims pending or, to the Company's Knowledge, Threatened with respect to any Employee Benefit Plan, or the assets thereof (other than routine claims for benefits), and, to Company's Knowledge, there are no facts which could reasonably give rise to any liability, action, suit, investigation, or claim against any Employee Benefit Plan, any fiduciary or plan administrator or other person dealing with any Employee Benefit Plan or the assets thereof.

(f) Except as could not result in material liability, no Person has: (i) entered into any nonexempt "prohibited transaction" (as such term is defined in ERISA and the Code)

with respect to any Employee Benefit Plan; (ii) breached a fiduciary obligation with respect to any Employee Benefit Plan; or (iii) otherwise has any liability for any failure to act or comply in connection with the administration or investment of the assets of any such plan.

(g) Each Employee Benefit Plan may be amended, terminated, modified or otherwise revised by the Company or any of its Subsidiaries in compliance with applicable laws, on and after the Closing, without further liability to the Company or any of its Subsidiaries.

(h) No Employee Benefit Plan provides medical, health, life insurance or other welfare-type benefits to retirees or former employees or individuals who terminate (or have terminated) employment with the Company or any of its Subsidiaries or any ERISA Affiliate, or the spouses or dependents of any of the foregoing (except for limited continued medical benefit coverage for former employees, their spouses and other dependents as required to be provided under Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA (“COBRA”)).

(i) With respect to all periods prior to the Closing, the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and COBRA have been satisfied with respect to each Employee Benefit Plan.

(j) With respect to each Employee Benefit Plan, all contributions, payments, premiums, expenses, reimbursements or accruals for all periods ending prior to or as of the Closing (including periods from the first day of the then current plan year to the Closing) shall have been made or accrued on the appropriate Audited Financial Statements and each such plan has no unfunded liability which is not reflected on the appropriate Audited Financial Statements.

(k) No communication or disclosure has been made that, at the time made, did not accurately reflect the terms and operations of any Employee Benefit Plan.

(l) No Employee Benefit Plan or any other agreement, program, policy or other arrangement by or to which the Company or any of its Subsidiaries or any ERISA Affiliate, are bound or are otherwise liable, by its terms or in effect, could reasonably be expected to require any payment or transfer of money, property or other consideration on account of or in connection with the Transaction or any subsequent termination of employment which payment could constitute an “excess parachute payment” within the meaning of Section 280G of the Code.

(m) None of Company or its Subsidiaries’ Employee Benefit Plans are “non-qualified deferred compensation plans” (within the meaning of Section 409A of the Code).

(n) To the best of their abilities and Knowledge, the Company and each of its Subsidiaries have, for purposes of each relevant Employee Benefit Plan, correctly classified those individuals performing services for the Company or any of its Subsidiaries as common law employees, leased employees, independent contractors or agents of the Company or any of its Subsidiaries.

(o) With respect to each Employee Benefit Plan which is intended to be qualified under Section 401(a) of the Code, the Company and each of its Subsidiaries have obtained a currently-effective determination letter from the U.S. Internal Revenue Service to the

effect that the form of such plan meets the requirements for qualification under Section 401(a) of the Code, and no event has occurred (whether by action or failure to take action) that could reasonably be expected to result in such determination letter becoming unreliable.

(p) None of the Assets is subject to any lien under ERISA or the Code. Neither Company nor any of its Subsidiaries is bound by any Contract or has any obligation or liability described in Section 4204 of ERISA.

4.15 Labor and Employment Matters and Workers Compensation.

(a) Except as set forth on Schedule 4.15(a): (i) none of the employees employed by the Company or any of its Subsidiaries is a party to or bound by any collective bargaining agreement or other labor Contract; (ii) no labor organization or group of employees has filed any representation petition or made any written demand for recognition; (iii) no organizing or decertification efforts are underway or, to the Company's Knowledge, Threatened; (iv) no labor strike, work stoppage, slowdown or other material labor dispute has occurred, and none is underway or, to the Company's Knowledge, Threatened; (v) there is no employment-related charge (including, but not limited to, an unfair labor practice charge), complaint, grievance, investigation, inquiry or obligation of any kind, pending or, to the Company's Knowledge, Threatened, in any forum, relating to an alleged violation or breach by the Company or any of its Subsidiaries (or its officers, directors, managers or members) of any Legal Requirement or Contract; (vi) all amounts due or accrued for all salary, wages, bonuses, commissions, vacation with pay, pension benefits or other employee benefits as of the Latest Balance Sheet Date are reflected in the Latest Balance Sheet; (vii) no employee employed in the Business has any agreement as to length of notice or severance payment required to terminate his or her employment, other than such as results by law from the employment of an employee without an agreement as to notice or severance; and (viii) neither Company nor any of its Subsidiaries will have any liability under any benefit or severance policy, practice, agreement, plan, or program which exists or arises, or may be deemed to exist or arise, under any applicable Legal Requirements or otherwise, as a result of the Transaction. With respect to the Transaction, any notice required under any employment-related Legal Requirement or any collective bargaining agreement has been, or prior to the Closing will be, given, and all bargaining obligations with any employee representative have been, or prior to the Closing will be, satisfied. Within the past three (3) years, neither Company nor any Subsidiary has implemented any plant closing or mass layoff of employees as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988, as amended, and the regulations issued thereunder, or any similar foreign, state or local law, regulation or ordinance ("**WARN Act**"). Within ninety (90) days preceding the Closing Date, no employee employed in the Business has suffered an "employment loss" with the Company, as such term is defined in the WARN Act.

(b) Schedule 4.15(b) sets forth all expenses, obligations, duties and liabilities relating to any claims by employees and former employees (including dependents and spouses) employed in the Business or any ERISA Affiliate of the Company or any of its Subsidiaries made and the extent of any specific accrual on or reserve therefor set forth on the Audited Financial Statements for (a) costs, expenses and other liabilities under any workers compensation laws in the United States, regulations, requirements or programs and (b) any other medical costs and expenses. To Company's Knowledge, no claim or injury, fact, event or condition exists that

would give rise to a material claim (individually or in the aggregate) by employees or former employees (including dependents and spouses) employed in the Business or any ERISA Affiliate of the Company or any of its Subsidiaries under any United States workers compensation laws, regulations, requirements or programs or for any other medical costs and expenses.

4.16 Employees. Schedule 4.16 is a complete and correct list setting forth as of the Closing Date (a) the names and current compensation rates and other compensation of all individuals presently employed by the Company or any of its Subsidiaries on a salaried basis, (b) the names and current compensation rates of all individuals presently employed in the Business on an hourly or piecework basis, and (c) the names and total annual compensation for all independent contractors who render services on a regular or seasonal basis to Company or any of its Subsidiaries. Except as set forth on Schedule 4.16, no Person listed thereon has received any bonus or increase in compensation, nor has there been any “general increase” in the compensation or rate of compensation payable to any such employees, since the Latest Balance Sheet Date or since such date there has been no promise to the employees listed on Schedule 4.16, orally or in writing, of any bonus or increase in compensation, whether or not legally binding. Neither Company nor any of its Subsidiaries has provided its employees with material perquisites, including but not limited to, country club dues and similar memberships, car allowances and car payments, and housing subsidies, during the last three (3) years.

4.17 Books and Records. The books of account and other records of the Company and each of its Subsidiaries (including, but not limited to, the minute books and membership interests records of the Company and each applicable Subsidiary as well as stock records of each applicable Subsidiary and copies of meetings of director or similar governing board meetings), copies of which have been delivered by the Company to the Investor, are complete and correct in all material respects and have been maintained in accordance with sound business practices.

4.18 Affiliate Transactions. Except as set forth on Schedule 4.18, neither the Company nor any of its Subsidiaries, nor any manager, stockholder, director, officer, manager, employee or Affiliate of the Company or any of its Subsidiaries or any of Company’s members or any entity in which any such Person or individual is an officer, director or the owner of [REDACTED] or more of the beneficial ownership interests, is or has ever been a party to any Contract with the Company or any of its Subsidiaries or has any interests in any property used by the Business or has any claim or right against the Business. Each Affiliate transaction was effected on terms equivalent to those which would have been established in an arm’s-length negotiation, except as disclosed on Schedule 4.18. Except as set forth on Schedule 4.18, none of the Company Parties nor any of their respective Affiliates has any direct or indirect interest in any competitor of the Business, except for passive ownership of less than [REDACTED] of the outstanding capital stock of any competing business that is publicly traded on any recognized exchange or in the over-the-counter market.

4.19 Insurance Policies. Schedule 4.19 contains a complete and accurate list of all insurance policies (including “self-insurance” programs) currently maintained by the Company or any of its Subsidiaries that covers the Company or any of its Subsidiaries and its operations (the “**Insurance Policies**”) and all general liability policies (the “**General Liability Policies**”) maintained by the Company or any of its Subsidiaries during the past three (3) years with respect to the Business and all material claims (other than claims made under group medical plans) now

pending or made under any current or prior insurance policies during such three (3)-year period. The Insurance Policies are in full force and effect, the Company and each of its Subsidiaries is not in default under any Insurance Policy, and no claim for coverage under any Insurance Policy has been denied. None of the Company Parties has received any notice of cancellation or, to the Company's Knowledge, intent to cancel or increase or intent to increase premiums with respect to the Insurance Policies.

4.20 Taxes.

(a) The Company and each of its Subsidiaries as applicable (i) has filed or caused to be filed in a timely manner all Tax Returns it was required to file under applicable Legal Requirements and all such Tax Returns are true, correct and complete in all material respects, and (ii) has timely paid in full all Taxes which are due and payable (whether or not shown to be due on such Tax Returns). The unpaid Taxes of the Company and each of its Subsidiaries (x) did not as of the Latest Balance Sheet Date exceed the reserve for tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and tax income) set forth on the face of the Latest Balance Sheet and (y) do not exceed that reserve as adjusted for the passage of time through the Closing Date.

(b) Schedule 4.20(b) contains a list of all jurisdictions (whether foreign or domestic) to which the Company is subject to Tax. The Company and each of its Subsidiaries have timely withheld and, if due, have timely remitted, with respect to its employees, foreign creditors, independent contractors or other third parties all U.S. Federal and state Taxes, FICA, FUTA, and other Taxes required to be withheld and/or, if due, timely remitted and all Forms W-2 and 1099 required with respect thereto have been accurately completed and timely filed.

(c) The Company and each of its Subsidiaries do not have any Tax deficiency outstanding, proposed, assessed, or, to the Company's Knowledge, Threatened by any Tax authority against the Company or each of its Subsidiaries. The Company has not executed or requested any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(d) No audit or other examination of any Tax Return of the Company or any of its Subsidiaries is presently in progress or pending, nor has the Company been notified in writing of any request for such an audit or other examination.

(e) There is no investigation or other Proceeding pending or, to the Company's Knowledge, Threatened by any Tax authority for any jurisdiction where the Company or any of its Subsidiaries did not file Tax Returns with respect to a given Tax that involves an assertion by such Tax authority that the Company or any of its Subsidiaries is or may be subject to a given Tax in such jurisdiction.

(f) There are no Liens for Taxes on the Assets other than Liens for Taxes not yet due and payable.

(g) Until the election contemplated to be made under Section 7.2(n) below, the Company or any of its Subsidiaries is not a party to or bound by any Tax indemnity, Tax sharing or Tax allocation agreements except as set forth in Schedule 4.20(g).

(h) Except for the [REDACTED], neither the Company nor any of its Subsidiaries has or ever had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(i) Neither the Company nor any of its Subsidiaries has nexus or a Taxable presence in a jurisdiction in which it does not file Tax Returns.

(j) The Company and its Subsidiaries set forth on Schedule 4.20(i) have been taxed since their inception for federal and state income tax purposes as a partnership (or an entity disregarded from its owner) and have not elected to be treated as an association taxable as a corporation.

(k) Neither the Company nor any of its Subsidiaries has made an effective election under Section 754 of the Code; provided however, that such an election will be made for the Company's tax year including or beginning with the Closing Date.

(l) Neither the Company nor any of its Subsidiaries will not be required to include any item of income in, or exclude any deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Legal Requirements) executed on or prior to the Closing Date; (iii) intercompany transactions or any excess loss account described in the Treasury Regulations promulgated under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Legal Requirements); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; or (v) prepaid amount received on or prior to the Closing Date.

(m) The Company and each of its Subsidiaries as applicable has disclosed on its foreign, Federal income and state income and franchise Tax Returns all positions taken therein that could give rise to a substantial understatement of U.S. Federal income tax within the meaning of Section 6662 of the Code or any corresponding or similar provision of state tax Legal Requirements

(n) None of the assets of the Company or any of its Subsidiaries is subject of a "safe-harbor lease" within the provisions of former Section 168(f)(8) of the Code, as in effect prior to amendment by the Tax Equity and Fiscal Responsibility Act of 1982. None of the Assets directly or indirectly secures any debt the interest on which is tax exempt under Section 103(e) of the Code. None of the Assets is "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(o) Neither Company nor any of its Subsidiaries has ever been a party to any Contract or Employee Benefit Plan that has resulted or could result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax Legal Requirements).

(p) Neither Company nor any of its Subsidiaries have any obligation to make distributions with respect to Taxes of its owners for any period (or portion thereof) ending on or before the Closing Date.

4.21 Litigation.

(a) Except as set forth on Schedule 4.21(a), there is no Proceeding pending or, to the Company's Knowledge threatened, or which was pending or threatened since January 1, 2010:

(i) that has been commenced by or against the Company or any of its Subsidiaries;

(ii) that otherwise relates to or may affect the Company or any of its Subsidiaries or the Business or any of the Assets; or

(iii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, the Transaction.

(iv) Except as set forth on Schedule 4.21(a), (x) no such Proceeding has, to the Company's Knowledge, been Threatened, and (y), to Company's Knowledge, no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding. The Company has delivered to the Investor complete and correct copies of all pleadings, correspondence, and other documents relating to each Proceeding listed on Schedule 4.21(a). The Proceedings listed on Schedule 4.21(a) will not, either individually or in the aggregate, have a Material Adverse Effect.

(b) Except as set forth on Schedule 4.21(b):

(i) there is no Order to which the Company, any of its Subsidiaries, the Business or any of the Assets is subject; and

(ii) no officer, manager, member, director, agent or employee of the Company is subject to any Order that prohibits such officer, manager, member, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Business.

(c) Except as set forth on Schedule 4.21(c):

(i) the Company and each of its Subsidiaries are, and at all times have been, in compliance with all of the terms and requirements of each Order and Government Regulation to which it is or has been subject;

(ii) no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order or Government Regulation to which the Company, each of its Subsidiaries, the Business or any of the Assets is subject; and

(iii) neither the Company nor any of its Subsidiaries has received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any term or requirement of any Order or Government Regulation to which the Company, any of its Subsidiaries, the Business or any of the Assets is or has been subject.

(d) Except as set forth on Schedule 4.21(d):

(i) Neither Company nor any of its Subsidiaries has had any accident, injury, safety or health violation (an “**Accident**”), either involving its employees or independent contractors or any of its tracks, railcars, terminals or other property since [REDACTED]. All Accidents have been fully covered by insurance and no claims, reservation of rights or other denials have been asserted by any insurance carrier.

Not in limitation of the foregoing, neither the Company nor any of its Subsidiaries is a party to any Contract or subject to any Order that would deprive the Company or any of its Subsidiaries of the ability to operate substantially as the Company and each of its Subsidiaries operates over the Rail Facilities on the date of this Agreement, or that would deprive the Company and each of its Subsidiaries of the ability to (i) serve directly all customers that may be currently served directly by Company or (ii) interchange with the carriers listed on Schedule 4.9(a) at or near the locations listed on Schedule 4.9(a).

4.22 Environment.

(a) (i) To Company’s Knowledge, Company and each of its Subsidiaries is and at all times has been in compliance with all Environmental Laws applicable to the operations of the Business, including but not limited to any facilities at the Owned Real Property and Leased Real Property and any ancillary operations thereon; (ii) the Company or each of its Subsidiaries, as applicable, while a Subsidiary of Company, possesses, and, during all periods of operations at the Owned Real Property and Leased Real Property while owned or leased by Company or its Subsidiaries, has possessed, all Environmental Permits reasonably necessary for the conduct of the Business in the manner that Company and its Subsidiaries have been conducting such Business, and has been in compliance with the terms and conditions of such Environmental Permits; (iii) the Company and each of its Subsidiaries, while a Subsidiary of Company, has been in material compliance with all requirements or conditions imposed under all of their Environmental Permits, and (v) the Company and each of its Subsidiaries has caused all related notices, documentation and applications (including applications for modification or renewal) with regard to such Environmental Permits to have been filed.

(b) Except in compliance with all applicable Environmental Laws, except in a quantity and condition that would not give rise to liabilities or remedial obligations under applicable Environmental Laws, and except as set out in Schedule 4.22(b),: (i) to Company’s Knowledge, there are no Hazardous Materials on, in, under or affecting the Real Property or any facilities or operations thereon; (ii) the Company and each of its Subsidiaries, while a Subsidiary of Company, has not generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced, or processed any Hazardous Material at the Owned Real Property, except in compliance with all applicable Environmental Laws; and (iii) to Company’s

Knowledge, there has been no Release of any Hazardous Material at or in the vicinity of any of the Owned Real Property and Leased Real Property.

(c) No Lien has been imposed on any Owned Real Property and Leased Real Property by any Governmental Body at the federal, state, or local level in connection with the presence on or off such Owned Real Property and Leased Real Property of any Hazardous Material.

(d) Except as set out in Schedule 4.22(d), neither Company nor any of its Subsidiaries has: (i) entered into or been subject to any consent decree, compliance order, or administrative order with respect to Owned Real Property and Leased Real Property or any facilities or operations thereon pursuant to any Environmental Law; (ii) received notice under the citizen suit provision of any Environmental Law in connection with any of the Owned Real Property and Leased Real Property or any facilities or operations thereon; or (iii) received any written request for information, notice, demand letter, administrative inquiry, or formal or informal complaint or claim with respect to any Hazardous Materials or compliance with Environmental Laws relating to the Owned Real Property and Leased Real Property or any facilities or operations thereon (including, without limitation, with respect to off-site disposal or transshipment of Hazardous Materials).

(f) To Company's Knowledge, no conditions exist or have existed with respect to the Owned Real Property and Leased Real Property or operations of any facilities or any ancillary operations thereon and no events, activities, practices, incidents or actions have occurred with respect to the Owned Real Property and Leased Real Property or any facilities or operations thereon which could reasonably be expected to interfere with or prevent continued compliance with applicable Environmental Laws, give rise to any common law or statutory liability or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation pursuant to Environmental Laws against or involving the Company or any of its Subsidiaries.

(g) The Company has provided the Investor with copies of all final environmental studies in their possession or control with respect to the Owned Real Property and Leased Real Property.

4.23 Conduct of the Business. Except as set forth on Schedule 4.23, since December 31, 2013, the Company and each of its Subsidiaries has conducted its portion of the Business only in the ordinary course of business consistent with past custom and practice, and has incurred no Liabilities other than in the ordinary course of business consistent with past custom and practice, there has been no Material Adverse Effect, and no contingency has developed or occurred which could reasonably be expected to result in or cause a Material Adverse Effect. Without limitation of the foregoing and except as set forth on Schedule 4.23, since December 31, 2013, the Company and each of its Subsidiaries has not:

(a) accelerated or delayed the provision of services, in a manner inconsistent with past practices;

(b) sold, assigned or transferred any asset or property right (other than inventory in the ordinary course of business), or mortgaged, pledged or subjected such asset or property right to any Lien, charge or other restriction, except for Liens for current property taxes not yet due and payable;

(c) sold, assigned, transferred, abandoned or permitted to lapse any Governmental Authorizations that are required for the operation of the Business, or related to any of the Proprietary Rights or other intangible assets, or disclosed any material proprietary confidential information to any Person, granted any license or sublicense of any rights under or with respect to any Proprietary Rights or other intangible assets;

(d) made or failed to make any material filing with any Government Entity;

(e) made any distribution, whether cash or non-cash to any of its members;

(f) received any complaint, notice of deficiency or other similar notices from any Government Entity;

(g) made or granted any increase in, or amended (except as may be required by law) or terminated, any existing plan, program, policy or arrangement, including, but not limited to, any Employee Benefit Plan or arrangement or adopted any new Employee Benefit Plan or arrangement, or entered into, modified or terminated any new collective bargaining agreement or multiemployer plan;

(h) undertaken any employee layoffs that could implicate the WARN Act;

(i) made any loans or advances to, or guarantees for the benefit of, or entered into any transaction with any stockholder, member, manager, employee, officer or director of the Business other than regular salary and expense reimbursement payments;

(j) suffered any extraordinary loss, damage, destruction or casualty loss or waived any rights of value in excess [REDACTED] whether or not covered by insurance and whether or not in the ordinary course of business;

(k) received written notification that any Major Customer or Major Supplier will stop or materially decrease in any respect the amount of business done with the Company or any of its Subsidiaries, respectively;

(l) entered into any other material transaction, other than in the ordinary course of business consistent with past custom and practice; or

(m) committed to any of the foregoing.

4.24 Absence of Questionable Payments. To Company's Knowledge, Company and each of its Subsidiaries have not, nor has any of Company or its Subsidiary's, shareholders,

members, managers, directors, officers, employees, agents or other Persons acting on behalf of the Company or any of its Subsidiaries, (a) used any entity or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to government officials or others or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §79dd-2), as amended, [REDACTED] or any other applicable U.S. Federal, state or foreign law, (b) accepted or received any unlawful contributions, payments, expenditures or gifts, or (c) established or maintained any fund or asset that has not been recorded in the books and records of the Company or any of its Subsidiaries.

4.25 Government Contracts. Except as set forth on Schedule 4.25, neither Company nor any of its Subsidiaries is a party to, or bound by the provisions of, any Material Contract (including purchase orders, blanket purchase orders and agreements and delivery orders) with the United States government or any department, agency or instrumentality thereof or any Governmental Body.

4.26 Entity Name; Business Locations. During the past five (5) years, the Company and each of its Subsidiaries has only been known as or used the entity, fictitious and trade names set forth on Schedule 4.26. Except as set forth on Schedule 4.26, the Company and each of its Subsidiaries have not been the surviving entity of a merger or consolidation nor has the Company acquired all or substantially all of the assets of any Person. During the past five (5) years, neither Company nor any of its Subsidiaries has had an office or place of business other than as listed on Schedule 4.26. All dispositions of businesses, Subsidiaries, divisions and entities are set forth on Schedule 4.26 and true and correct copies of all material documents relating thereto have been provided to Investor and all such documents are in full force and effect.

4.27 Major Customers. Schedule 4.27 sets forth the Major Customers of the Company and each of its Subsidiaries along with the dollar value of the revenue from each such customer for the twelve-month period ended on the Latest Balance Sheet Date. In the twelve months preceding the Closing Date, no such Major Customer has cancelled or otherwise terminated, or, to the Company's Knowledge, Threatened to cancel or otherwise terminate, its relationship with the Company or any of its Subsidiaries, or reduce, or, to the Company's Knowledge, Threatened to reduce, its business with the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has received any written notice nor has any Knowledge that any Major Customer intends to cancel or otherwise adversely modify its relationship with the Company or any of its Subsidiaries as a result of the Transaction, or that any such Major Customer is Threatened with bankruptcy or insolvency.

4.28 Major Suppliers. Schedule 4.28 contains a complete and correct list of the [ten (10)] largest suppliers to the Company and each of its Subsidiaries, in terms of the Company and each of its Subsidiaries' purchases from such suppliers for the twelve-month period ended on the Latest Balance Sheet Date. In the twelve months preceding the Closing Date, no such material supplier has canceled or otherwise terminated, or, to the Company's Knowledge, Threatened to cancel or terminate, its relationship with the Company or any of its Subsidiaries, or reduce, or, to the Company's Knowledge, Threatened to reduce, its business with the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has received any written notice

nor has any knowledge that any such supplier intends to cancel or otherwise adversely modify its relationship with the Company or such Subsidiary on account of the Transaction, or that any such supplier is Threatened with bankruptcy or insolvency.

4.29 Accounts Receivable. All accounts receivable (as determined in accordance with GAAP) (the “Accounts Receivable”) included in the Assets and reflected on the Net Working Capital Schedule have arisen from bona fide transactions by the Company or any of its Subsidiaries in the ordinary course of business, none of the account debtors are Affiliates of any Company Party, and none of such Accounts Receivable permits the account debtor to raise any bona fide defense, counterclaim or set-off, claim for faulty workmanship, defective quality, untimely or inaccurate delivery or other breach of contract or promotional, advertising or other sales or marketing allowances or rebates, and the Company is not aware of any basis for any of the foregoing or for any account debtor to return or contest any Account Receivable. To the Company’s Knowledge, all of the Accounts Receivable are good and collectible within a normal collection cycle. None of the Accounts Receivable include work-in-process.

4.30 Brokers or Finders. Neither the Company nor any of the Company’s members nor any of its Subsidiaries nor any of their respective Representatives has incurred any obligation or liability, contingent or otherwise, for brokerage or finders’ fees or agents’ commissions or other similar payment in connection with this Agreement or the Transaction.

4.31 Disclosure. To Company’s Knowledge, this Agreement, the Transaction Documents, and the Schedules hereto do not contain any untrue statement of a material fact and do not omit to state a material fact necessary in order to make the statements contained therein or herein not misleading in light of the circumstances under which they were made. There is no fact known to Company or any of its Subsidiaries relating to the Assets, the Company or any of its Subsidiaries or the Business that has had, or could reasonably be expected to have, a Material Adverse Effect. Any information or documents that Company or any Selling Member includes or discloses on any schedule attached hereto shall be deemed included or disclosed on all other schedules hereto to the extent applicable to such schedules.

EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE III AND THIS ARTICLE IV, COMPANY AND SELLING MEMBERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR EQUITY, IN RESPECT OF COMPANY, ITS SUBSIDIARIES, SELLING MEMBERS, OR ANY OF THEIR RESPECTIVE ASSETS, LIABILITIES OR OPERATIONS, INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. INVESTOR HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN ARTICLE III AND THIS ARTICLE IV, INVESTOR IS PURCHASING THE INVESTOR UNITS ON AN “AS-IS, WHERE-IS” BASIS.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE INVESTOR

As a material inducement to the Company and the Selling Members to enter into this Agreement, the Investor represents and warrants to the Company and the Selling Members as follows:

5.1 Organization and Good Standing. The Investor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Investor has the requisite limited liability company power and authority to execute and deliver this Agreement and the other Transaction Documents to be executed by it, to perform its obligations hereunder and thereunder and to consummate the Transaction.

5.2 Power and Authority; Authorization; Due Execution and Binding Effect. The Investor has the requisite legal capacity, power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, to consummate the Transaction and to perform its obligations under this Agreement and the Transaction Documents to which it is a party and to consummate the Transaction. The execution and delivery of this Agreement and the Transaction Documents and the Transaction Documents to which the Investor is a party, and the performance by the Investor of its obligations hereunder and thereunder, have been duly authorized by all necessary limited liability company action. This Agreement and the Transaction Documents to which the Investor is a party have been duly and validly executed and delivered by the Investor. This Agreement and the Transaction Documents to which the Investor is a party will constitute, upon such execution and delivery hereof, the valid and binding obligations of the Investor, enforceable in accordance with their respective terms except as enforcement thereof may be limited by applicable Insolvency Laws.

5.3 No Conflict. Assuming obtaining the Required Governmental Consents, neither the execution and delivery of this Agreement or any Transaction Document by the Investor nor the performance by the Investor of the Transaction will, directly or indirectly:

(a) contravene, conflict with, or result in (with or without notice or lapse of time) a violation or breach of (i) any provision of the Organizational Documents of the Investor, (ii) any resolution adopted by its governing body, or (iii) any Legal Requirement, Governmental Authorization, Contract or any Order to which the Investor may be subject;

(b) give any Person or Governmental Body the right (with or without notice or lapse of time) to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, modify, withdraw or suspend any Contract, Legal Requirement, Governmental Authorization or Order applicable to the Investor;

(c) result in the creation or imposition of any lien, charge or encumbrance upon the Investor Units or any of the assets of the Investor; or

(d) constitute a part of a plan or scheme to evade the registration provisions of the Securities Act.

5.4 Purchase for Investment.

(a) The Investor will acquire the Investor Units for his own account, for investment and not with a view to or for reselling or distributing all or any part thereof in any transaction which would constitute a “distribution” within the meaning of the Securities Act. The Investor acknowledges that (i) none of the Investor Units have been registered under the Securities Act or any applicable state securities laws, (ii) the Investor Units can only be sold or otherwise transferred pursuant to registration under the Securities Act and applicable state securities laws or an exemption therefrom (in which case the Investor shall first provide the Company an opinion of counsel, which counsel and the form and substance of the opinion, must be reasonably satisfactory to the Company to the effect that such exemption is available) and (iii) the Company is under no obligation to file a registration statement with the SEC or any other Governmental Body with respect to the Investor Units.

(b) The Investor (i) has adequate means of providing for its current needs and possible contingencies and has no need of liquidity of its investment in the Investor Units, (ii) the purchase of the Investor Units is consistent, in both nature and amount, with the Investor’s overall investment program and financial condition, (iii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Investor Units, (iv) is able to bear the complete loss of its investment in the Investor Units, (v) has had the opportunity to ask questions of, and receive answers from, the Company and its management concerning the terms and conditions of the transfer of the Investor Units to the Investor pursuant to this Agreement and the Revised Operating Agreement, and to obtain additional information, and (vi) is, and each of its equity owners are, an “accredited investor” within the meaning of Rule 501 of the regulations promulgated under the Securities Act.

(c) Investor is aware of the following: (i) the Investor Units are a speculative investment which involves a high degree of risk, (ii) Investor’s investment in the Investor Units is not readily transferable and it may not be possible for Investor to liquidate its investment, (iii) there are substantial restrictions on the transferability of the Investor Units that are not registered under the Securities Act, and (iv) no federal or state agency has made any finding or determination as to the fairness of the Investor Units for public investment nor any recommendation or endorsement of the Investor Units.

(d) Investor acknowledges that none of the following information has ever been represented, guaranteed, or warranted to it expressly or by implication, by the Company, any of its Subsidiaries, any Selling Member or any officers, members, directors, managers, shareholders, agents or employees of any of the foregoing, or by any other person: (i) the appropriate or exact length of time that Investor will be required to hold the Investor Units, (ii) the amount or type of consideration, profit, or loss to be realized, if any, as a result of an investment in the Investor Units, (iii) that the past performance or experience of the Business, the Company, any of its Subsidiaries or any of their members, shareholders, managers, directors, officers or employees, or any other person, will in any way indicate or predict economic results in connection with the purchase of Investor Units; and (iv) the amount of distributions that the Company will make.

5.5 Brokers and Finders. Neither the Investor nor its agents has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or the transactions contemplated hereby.

5.6 No Consent Required. No consent, approval, order or authorization of, or filing with, any governmental authority or entity or any other party is required of Investor in connection with the execution and delivery by Investor of this Agreement or the consummation of any of the transactions contemplated hereby, or any consent where the failure of Investor to obtain such consent would not materially and adversely affect Investor's ability to consummate the Closing hereunder in accordance with the terms and conditions of this Agreement or otherwise prevent Investor from performing in all material respects any of its obligations under this Agreement.

ARTICLE VI

ACTIONS PRIOR TO THE CLOSING DATE

The respective parties hereto covenant and agree to take the following actions between the date hereof and the Closing Date:

6.1 Investigation of Company and Subsidiaries by Investor. Company shall afford, and cause each of its Subsidiaries to afford, to the officers, employees and authorized representatives (including, without limitation, independent public accountants and attorneys) of Investor and its financing sources and agents reasonable access and opportunity to conduct and complete an acquisition review, including, without limitation a review of Company and each of its Subsidiaries' books and records and other items of entity formalities, leases, contracts and other agreements, income tax returns, physical inspection of the assets for the purpose of conducting an environmental audit and to inspect the properties and assets, and, subject to applicable privacy laws, the right to inquire and receive information concerning the Company and its Subsidiaries' employees, customers, vendors, suppliers, independent contractors, representatives and others having a business relationship with the Company and its Subsidiaries and the right, if desired, to conduct environmental site assessments (including if necessary testing and sampling), title commitments and policies and surveys of Owned Real Property. Company shall and shall cause each of its Subsidiaries to furnish to Investor and its authorized representatives such additional information concerning the properties and assets of the Company and its Subsidiaries as shall be reasonably requested, including all such information as shall be necessary to enable Investor and its representatives to verify the accuracy of the representations and warranties contained in Articles III and IV, and to determine whether the conditions set forth in Article VII have been satisfied. No investigation made by Investor or its representatives hereunder shall affect the representations and warranties of Company or any Selling Member hereunder except to the extent that on or before the Closing Date Investor obtains actual knowledge of any facts, events or circumstances that would cause the particular representation or warranty in question to be untrue. Investor agrees that it will keep and maintain any and all information obtained by it, its agents and counsel confidential, and will not make use of any such information other than for its evaluation of the transactions contemplated by this Agreement and shall comply with all applicable privacy laws in connection with same. Investor shall either

destroy or return all information to Company in the event that the transactions contemplated by this Agreement do not occur.

6.2 Preserve Accuracy of Representations and Warranties. Each of the parties hereto shall refrain from taking any action which would render any respective representation, warranty or covenant contained in Article III, IV or V of this Agreement inaccurate as of the Closing Date. Each party shall promptly notify the other of any (a) event or condition which would render any representation or warranty set forth in Article III, IV or V untrue or in breach or would cause any covenant in Article VI to be unfulfilled or any condition set forth in Article VII to be unfulfilled or (b) any action, suit or proceeding that shall be instituted or threatened against such party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement. Not in limitation of the foregoing, between the date of execution of this Agreement and the Closing Date, Company shall and shall cause each of its Subsidiaries to conduct the Business in the ordinary course and shall not, without the prior written consent of Investor which will not be unreasonably withheld and subject to applicable law, in connection with the Business (a) move or relocate from its Owned Real Property, Leased Real Property, track, yards, routes, offices, railcars, or plant facilities or enter into any purchase contract or lease for any site, (b) change billing practices or rates, (c) increase salaries, bonuses or compensation structure of any employee (or contracted for employee) other than in the ordinary course of business and consistent with past practices, (d) terminate or move to another of Company or its Subsidiaries' operations any employee or asset, (e) amend, terminate or renegotiate any of the Contracts, (f) make any dividends, distributions or other payments to any member of the Company (except for base compensation currently being paid to members in their capacity as officers or employees), (g) change any method of accounting or any method of valuation under GAAP, (h) institute or settle any litigation, (i) discontinue any trademark or other Intellectual Property Right, (j) take any action with respect to, or make any change in, its methods of management, distribution, marketing, accounting or operating (including practices relating to payment of trade accounts and carrying levels of inventory) or relating to writing down or failing to write down (in accordance with its past practices consistently applied) or writing up the value of any inventory or other assets of Company or any of its Subsidiaries, (k) take any action other than in the ordinary course of business and in a manner consistent with past practice with respect to (i) increasing the compensation or other remuneration of any officer, director or stockholder of Company or any of its Subsidiaries, (ii) paying any bonuses to any of employees of the Company or any of its Subsidiaries (except for bonuses earned in the ordinary course of business pursuant to bonus plans described herein and disclosed to Investor in writing or otherwise set forth as a current liability for purposes of determining Net Working Capital), (iii) granting of any severance or termination pay (otherwise than pursuant to policies of Company or any of its Subsidiaries in effect on the date hereof and disclosed to Investor in writing), or (iv) increasing benefits payable under its severance or termination pay policies in effect on the date hereof, (l) waive any material rights of Company or any of its Subsidiaries or settle any material claim involving the Company or any of its Subsidiaries, (m) enter into any contracts or agreements involving the provision of goods or services in excess of [REDACTED] (n) commit to make or make capital expenditures or purchase any new business [REDACTED] (o) sell any asset except in the ordinary course of business, (p) enter into any non-competition agreements, confidentiality agreements and similar agreements or any other agreement which would have been required to be listed as a Material Contract had it been in effect on the date of execution hereof or (q) agree to do any of the

foregoing. Between the date hereof and the Closing Date, Company shall and shall cause each of its Subsidiaries to (I) pay all accounts payable when due (unless contested in good faith), (II) diligently attempt to collect the full amount of accounts receivable consistent with past practices, (III) maintain all of its material assets in good operating condition and repair, ordinary wear and tear excepted, except for trackage, (IV) maintain its trackage in a condition appropriate to its present or intended use, (V) replace all worn or obsolete fixed assets in accordance with past custom and practice, (VI) maintain existing insurance coverage and (VIII) otherwise conduct its business in the normal and usual course.

6.3 Consents and Approvals. Company shall use and shall cause each of its Subsidiaries to use its best efforts promptly to obtain all consents and amendments from parties to the Material Contracts and all consents, amendments or permits from each Governmental Body that are required by the terms thereof, this Agreement or otherwise for the due and punctual consummation of the transactions contemplated by this Agreement. Company shall and shall cause each of its Subsidiaries to cooperate with and assist Investor and its authorized representatives in order to provide an efficient transfer of the control and management of the Company and each of its Subsidiaries and to avoid any undue interruption in the activities and operations of the Company and each of its Subsidiaries following the Closing Date except for the transactions contemplated hereby.

6.4 Regulatory and Other Authorizations. Investor, the Company, and each of the Selling Members shall, and Company shall cause each of its Subsidiaries to, use its respective reasonable best efforts to obtain the Required Governmental Consents and all other governmental authorization of all governmental entities that may be or become necessary for its respective execution and delivery of, and the respective performance of its obligations pursuant to, this Agreement. Investor, Company (who shall cause the applicable Subsidiaries) and Selling Members shall each use their reasonable best efforts to file within five (5) business days after the date of this Agreement but, in any event, not later than ten (10) business days after the date of this Agreement all required filings to receive all Required Governmental Consents including without limitation the consent and approval of the STB. Each of Investor, the Company, and each of the Selling Members agrees to respond as promptly as practicable to any request for additional information or documentary material made pursuant to the HSR Act and any inquiries or notices from the STB. The Company and Investor will each furnish to the other all information about the Company, its Subsidiaries, and their affiliates or Investor and its affiliates, as the case may be, that is required by the STB in connection with the transaction contemplated by this Agreement. All filing fees and expenses to obtain the Required Governmental Consents shall be borne by the Company and paid prior to Closing or set forth as a current liability for purposes of determining Net Working Capital.

6.5 Updates. Until Closing, (a) Company shall promptly notify in writing Investor of any event or condition which would render any representation or warranty set forth in Article IV, untrue or in breach or would cause any covenant in Article IV to be unfulfilled, (b) each Selling Member shall promptly notify in writing Company and Investor of any event or condition which would render any representation or warranty set forth in Article III, untrue or in breach or would cause any covenant in Article VI to be unfulfilled, and (c) Investor shall promptly notify in writing Company of any event or condition which would render any representation or warranty set forth in Article V, untrue or in breach or would cause any covenant in Article VI to be

unfulfilled. In addition, each party shall promptly notify in writing the other parties with respect to any action, suit or proceeding that shall be instituted or threatened against such party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement. No such update shall in any way be deemed to be an amendment to any Schedule hereto or a waiver of any right of any party to claim breach of such Schedule prior to the Closing Date.

6.6 No Public Announcements. Neither Selling Member, nor the Company, nor any of its Subsidiaries nor Investor nor any Affiliate or Representative of any of the foregoing, on the one hand, nor Investor or any Affiliate thereof, on the other hand, may, without the approval of the Company and Investor (which may not be unreasonably withheld), make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that such party shall be so obligated by law, in which case the other party shall be advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

6.7 Update of Financial Information. On or before the fifteenth (15th) day of each month following the date hereof and prior to the Closing, Company shall provide to Investor true and correct copies of unaudited Interim Financial Statements of the kind contemplated in Section 4.6(b) for the Company and Subsidiaries for each month and three month period (together with year-to-date statements) beginning with the statements for the month ending February 28, 2014 and through the month preceding the Closing. The Interim Financial Statements shall be prepared in conformity with GAAP (except for required and normal year-end adjustments) and present fairly in all material respects the assets, liabilities, financial position and results of operations of the Business and of each applicable entity as of their respective dates and for the respective periods covered thereby.

6.8 Exclusive Dealing. Company shall, and shall cause each and all of its Subsidiaries, Selling Members, Affiliates and Representatives and agents to deal exclusively with Investor with respect to the sale of the Common Units contemplated herein and shall not solicit, encourage, entertain, conduct or participate in offers, inquiries or negotiations or provide or cause to be provided information to any prospective purchaser or its agents regarding any such possible transaction (nor shall Company, its Subsidiaries, Selling Members, Affiliates and Representatives and agents authorize or permit any shareholder, member, partner, director, officer, employee, attorney, accountant or other representative or agent to solicit, encourage, entertain, conduct or participate in offers or inquiries or provide or cause to be provided information to any prospective purchaser or its agents regarding any such possible transaction) with a view to the acquisition of any equity interest in the Company or any of its Subsidiaries, merger or consolidation of the Company or any of its Subsidiaries into any other entity, sale of all or substantially all of the assets of the Company or any of its Subsidiaries, management agreement for any of the Company or any of its Subsidiaries, or any joint venture or similar merger with or into Company or any of its Subsidiaries and/or any Affiliate thereof or any interest therein.

6.9 UCC, STB, Judgment and Tax Lien Searches. Company shall, at its expense, provide Investor, prior to the Closing Date, with copies of Uniform Commercial Code, STB and such other similar searches as Investor shall reasonably request, and judgment and tax lien

7.2 Conditions to Obligations of the Investor to Effect the Closing. The obligations of the Investor to consummate the Investment shall be subject to the satisfaction or, in the Investor's sole discretion, waiver on or prior to the Closing Date of each of the following conditions:

(a) The representations and warranties of the Company and Selling Members set forth herein (i) that are qualified as to materiality shall be true and correct both when made and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), and (ii) that are not qualified as to materiality shall be true and correct both when made and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date) in all material respects.

(b) The Company and Selling Members shall have performed in all material respects all covenants required to be performed by them at or prior to the Closing under this Agreement.

(c) The Investor shall have received a certificate, dated as of the Closing Date, signed by the Company and Selling Members to the effect that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

(d) The Investor shall have received certified copies of the resolutions of the members and Board of Managers or Board of Directors of the Company approving the Transaction and the Transaction Documents.

(e) Since January 1, 2014, there shall not have occurred any change, event, occurrence, development or circumstance which, individually or in the aggregate, has had, or could reasonably be expected to have a Material Adverse Effect.

(f) Each of the Company, Selling Members and to the extent applicable each of Company's Subsidiaries shall have performed and complied in all material respects with all of the covenants and agreements required to be performed by each of them under this Agreement and the other Transaction Documents to which they are party on or prior to the Closing.

(g) The Investor shall have received certificates of any state of the United States where the Company and each of its Subsidiaries are qualified to do business providing that the Company and each such Subsidiary are in good standing.

(h) The Company and/or Selling Members shall have delivered to Investor prior to the Closing a certification in compliance with Section 1445 and the Treasury Regulations thereunder that such Person is not a foreign person.

(i) All consents by third parties including all Required Governmental Consents, all Required Contract Consents and other consents identified on Schedule 4.5 that are required for the Transaction shall have been obtained, all on terms reasonably satisfactory to Investor.

(j) No action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable judgment, decree, injunction, order or ruling would prevent the performance of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or any Transaction Documents, or cause such transactions to be rescinded or materially and adversely affect the right of any Company Party to affect the transactions contemplated hereby, or to affect the Investor's right to own the Common Units, and no judgment, decree, injunction, order or ruling shall have been entered which has any of the foregoing effects.

(k) On or before the Closing Date, the Company shall have delivered to the Investor all of the following:

(i) a copy of the certificate of formation or organization or equivalent document for each of the Company and its Subsidiaries, certified by the appropriate authority in the jurisdiction in which the Company and such Subsidiaries were organized and dated as of or about the Closing Date;

(ii) a copy of the existing operating agreement of the Company (prior to the amendment contemplated herein), certified by its Board of Managers and a copy of each stockholder agreement or operating or similar agreement, if any, of each of Company's Subsidiaries certified by the Company; and

(iii) such other documents or instruments as the Investor may reasonably request to effect the transactions contemplated hereby.

(l) The Investor shall have completed its due diligence on terms and conditions satisfactory to it.

(m) The Company and any applicable Subsidiary, if requested by the Investor, shall have made any and all elections required under Section 754 of the Code.

(n) [Others?]

7.3 Conditions to Obligations of the Company and Selling Members to Effect the Closing. The obligations of the Company and Selling Members to consummate the Closing shall be subject to the satisfaction or, in the Company's sole discretion, waiver on or prior to the Closing Date of each of the following conditions:

(a) The representations and warranties of the Investor set forth herein (i) that are qualified as to materiality shall be true and correct both when made and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), and (ii) that are not qualified as to materiality shall be true and correct both when made and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date) in all material respects.

(b) The Investor shall have funded the Cash Consideration in accordance with Article I.

(c) The Investor shall have performed in all material respects all covenants required to be performed by it at or prior to the Closing under this Agreement.

(d) The Company shall have received a certificate, dated as of the Closing Date, signed by the [_____] of the Investor, to the effect that the conditions set forth in Section 7.3(a) and 7.3(c) have been satisfied.

(e) The Company shall have received certified copies of the resolutions of the manager of the Investor approving the transactions contemplated hereby by Investor and the Transaction Documents to which the Investor is a party.

(f) All applicable conditions precedent to the Initial Borrowing shall have been satisfied and the Initial Borrowing shall have funded.

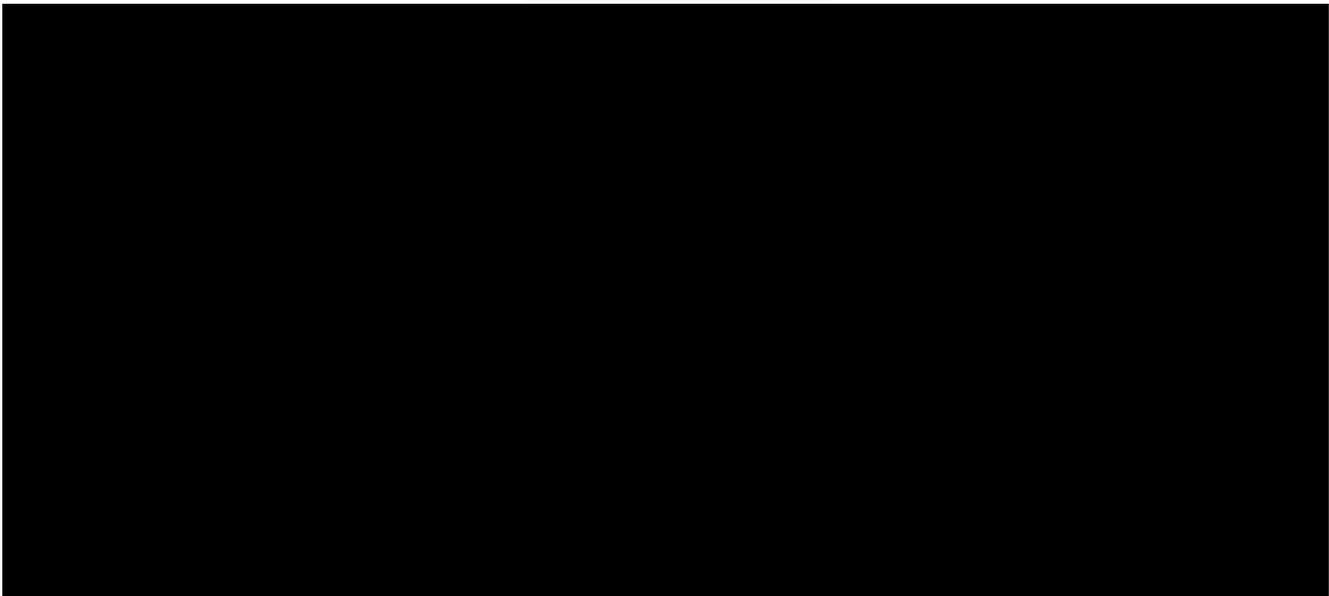
(g) On or before the Closing Date, Investor shall have delivered to Company all of the following:

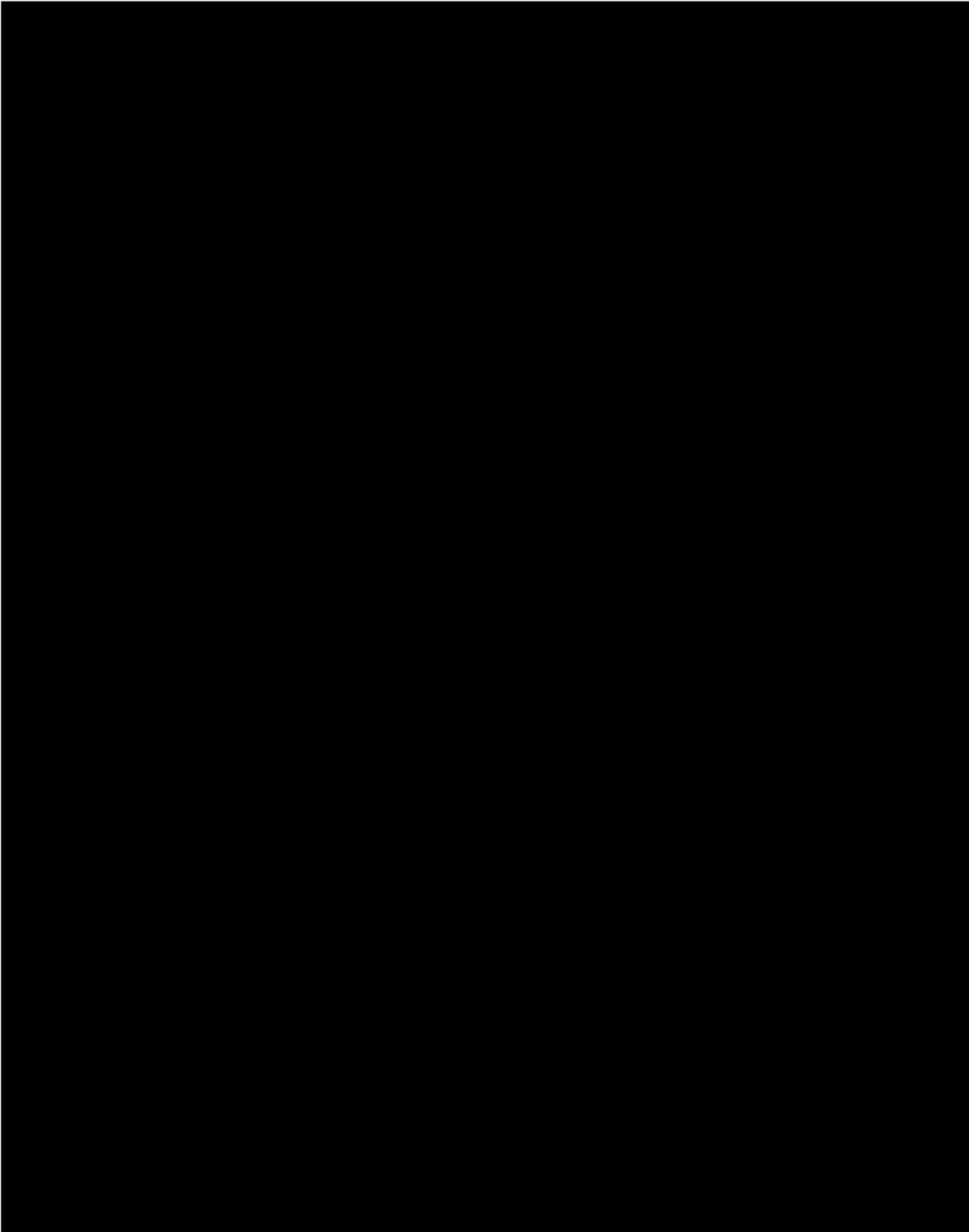
(i) a copy of the certificate of formation or organization or equivalent document for Investor, certified by the appropriate authority in the jurisdiction in which Investor is organized and dated as of or about the Closing Date; and

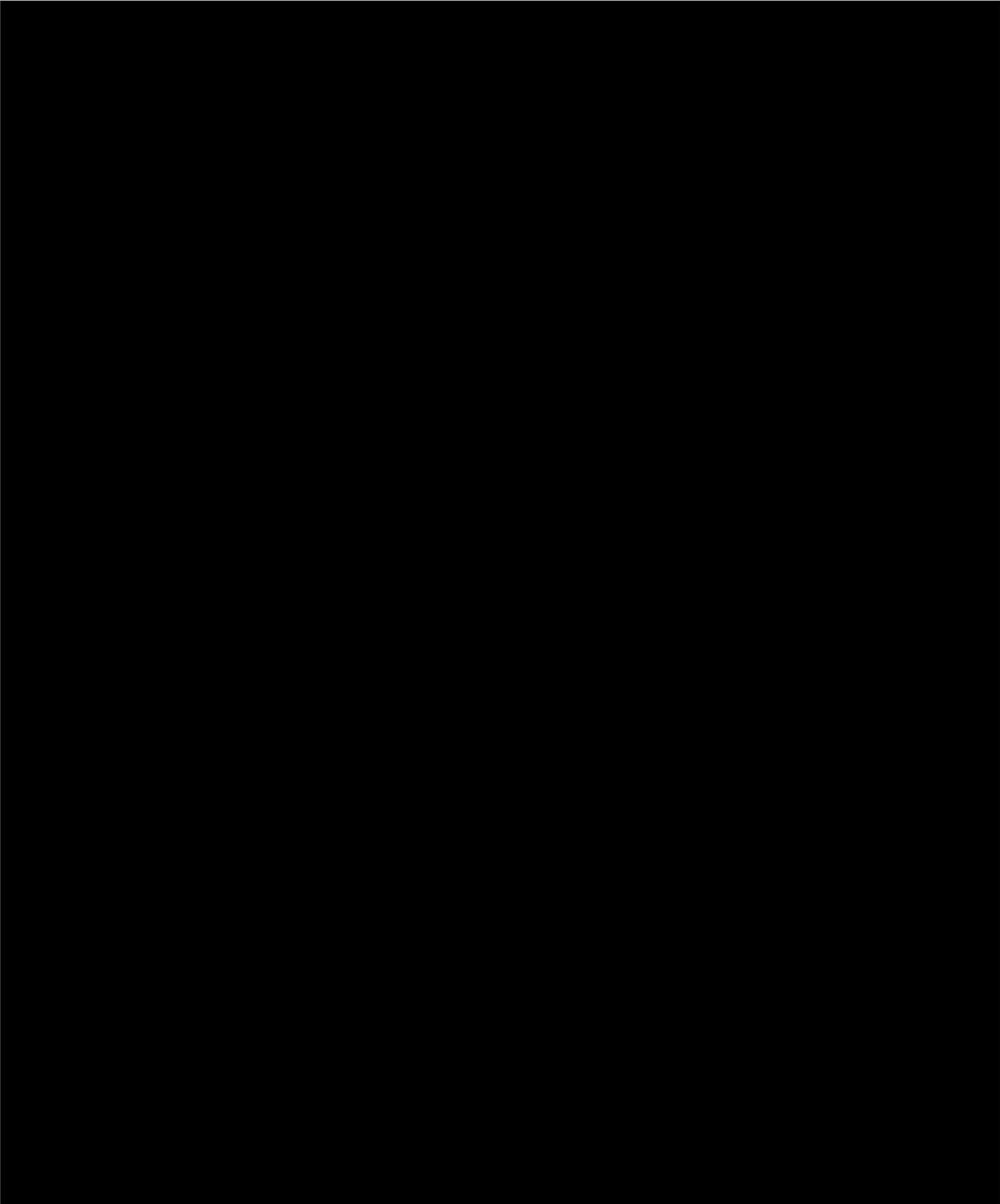
(ii) such other documents or instruments as Company may reasonably request to effect the transactions contemplated hereby.

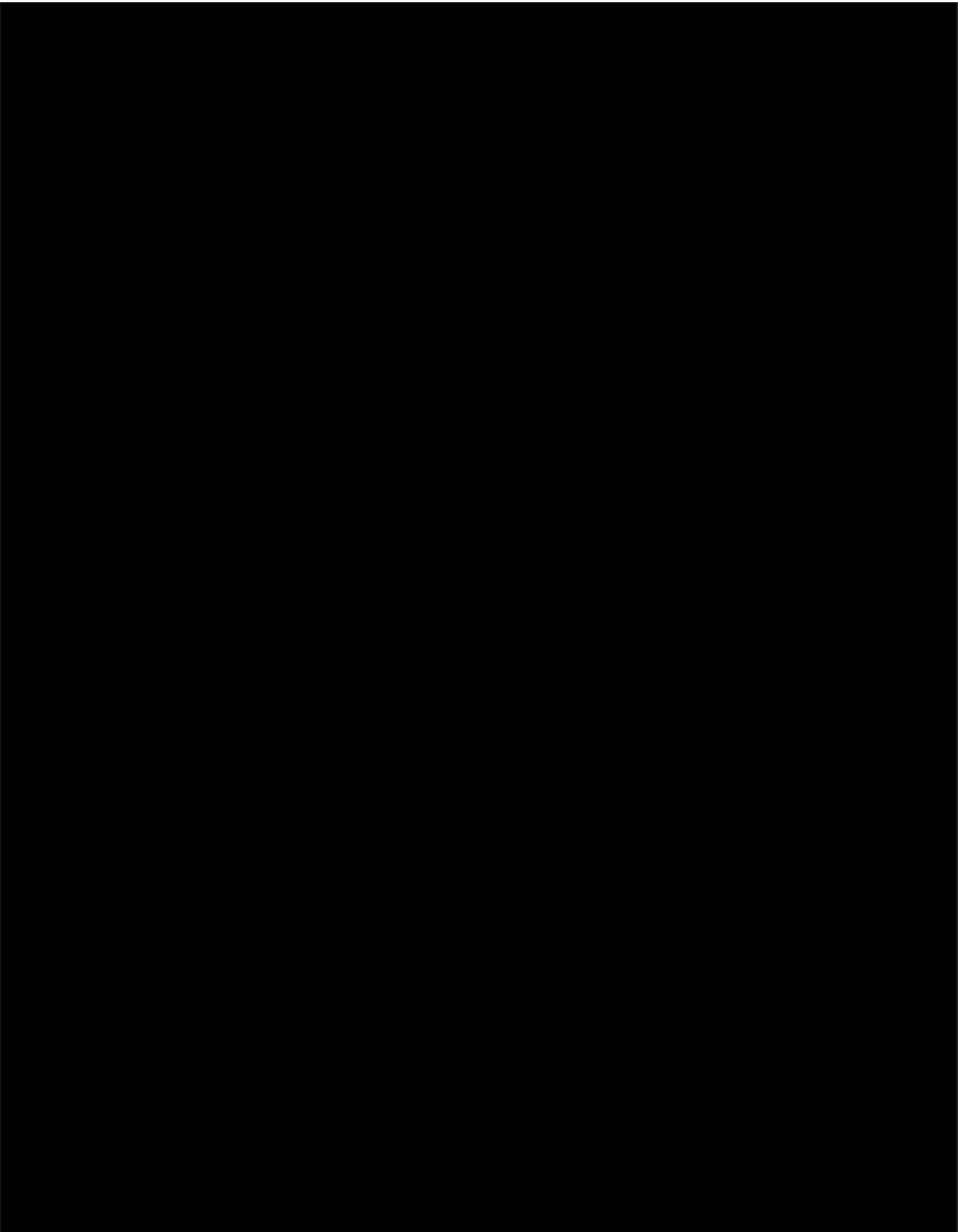
ARTICLE VIII

INDEMNIFICATION









8.5 Indemnification Procedure for Third Party Claims.

(a) In the event that subsequent to the Closing any Person entitled to indemnification under this Agreement (an “**Indemnified Party**”) receives notice of the assertion of any claim or of the commencement of any action or Proceeding by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Body) (a “**Third Party Claim**”) against such Indemnified Party, against which a party to this Agreement is required to provide indemnification under this Agreement (an “**Indemnifying Party**”), the Indemnified Party shall give written notice of such claim to the Indemnifying Party within thirty (30) days after learning of such claim (the “**Claim Notice**”). The Indemnifying Party shall have the right, upon written notice to the Indemnified Party (the “**Defense Notice**”) within thirty (30) days after receipt from the Indemnified Party of the Claim Notice, which Defense Notice shall specify the counsel the Indemnifying Party will appoint to defend such claim (“**Defense Counsel**”), to conduct at its expense the defense against such claim in its own name, or, if necessary, in the name of the Indemnified Party; provided, however, that the Indemnified Party shall have the right to approve the Defense Counsel, which approval shall not be unreasonably withheld, delayed or conditioned. In the event the Indemnifying Party and the Indemnified Party cannot agree upon such counsel within ten (10) days after the Defense Notice is provided, then the Indemnifying Party shall propose an alternate Defense Counsel, which shall be subject again to the Indemnified Party’s approval, which approval shall not be unreasonably withheld, delayed or conditioned (and such process shall be repeated until the Indemnified Party shall have approve the Defense Counsel specified by the Indemnifying Party.) Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume control of a Third Party Claim and shall pay the reasonable fees and expenses of counsel retained by the Indemnified Party if (w) the Third Party Claim seeks injunctive or other equitable relief, (x) the Indemnified Party, in the claim notice to the Indemnifying Party, states that, based on advice of counsel, it believes that its interests in the Third Party Claim is or can reasonably be expected to be adverse to the interests of the Indemnifying Party, (y) such Indemnifying Party is unable to or does not provide the Indemnified Party with reasonable assurance of its ability to pay the expenses of the

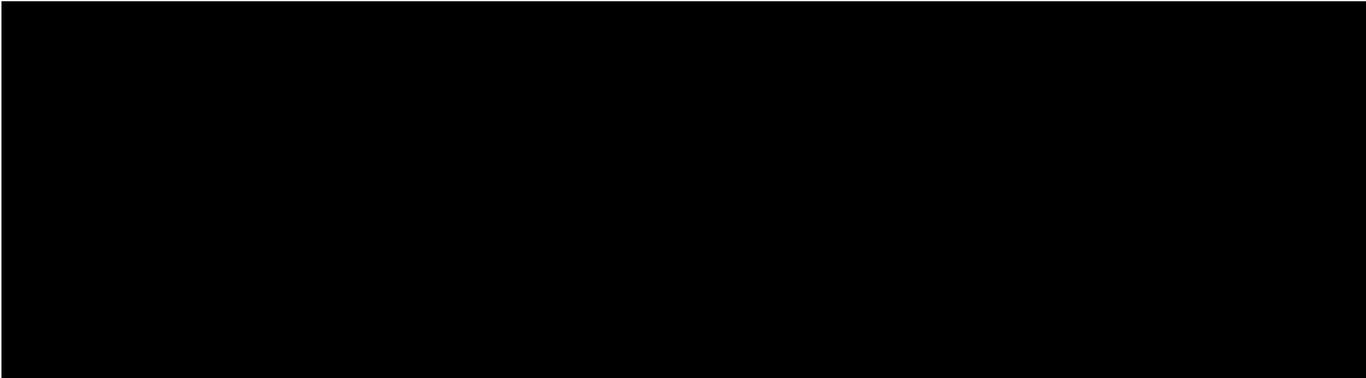
defense against such Third Party Claim, or (z) the Third Party Claim involves or is related to a Special Claim.

(b) In the event that the Indemnifying Party shall fail to give the Defense Notice within the time period described above, it shall be deemed to have elected not to conduct the defense of the subject claim, and in such event the Indemnified Party shall have the right to conduct such defense in good faith and to compromise and settle the claim in good faith subject to the consent of the Indemnifying Party (which consent will not be unreasonably withheld) and such Indemnifying Party will be liable for all costs, expenses, settlement amounts or other Losses actually paid or incurred in connection therewith. If the Indemnifying Party is not entitled to assume the defense of a Third Party Claim because of reasons set forth in the last sentence of the preceding paragraph, the Indemnified Party may not settle the Third Party Claim without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed, if such settlement would lead to any liability or create any other obligation of the Indemnifying Party.

(c) In the event that the Indemnifying Party does deliver a Defense Notice within the time period described above and thereby elects to conduct the defense of the subject claim, the Indemnifying Party shall diligently conduct such defense and the Indemnified Party will cooperate with and make available to the Indemnifying Party such assistance and materials as it may reasonably request, all at the expense of the Indemnifying Party, and the Indemnified Party shall have the right at its expense to participate in the defense assisted by counsel of its own choosing.

(d) The Indemnifying Party may enter into any settlement of any Third Party Claim; provided, however, the Indemnifying Party may not enter into any settlement of any Third Party Claim without the prior written consent of the Indemnified Party if pursuant to or as a result of such settlement, (A) injunctive or other equitable relief would be imposed against the Indemnified Party, or (B) such settlement would or could reasonably be expected to lead to any liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnifying Party would not be liable to the Indemnified Party.

(e) A failure by an Indemnified Party to give timely, complete or accurate notice as provided in this Section 8.5 will not affect the rights or obligations of any party hereunder except and only to the extent that, as a result of such failure, any party entitled to receive such notice was directly damaged as a direct result of such failure to give timely notice.

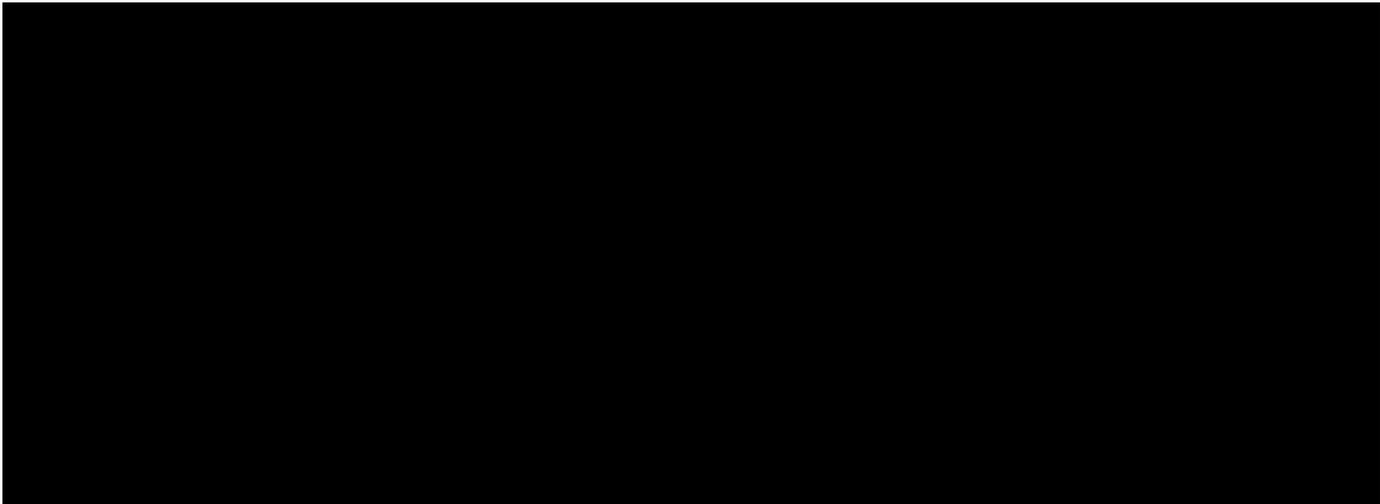


8.7 Threshold for Recovery; Maximum Liability; Calculation of Losses.

(a) Except with respect to breaches or inaccuracies of, or related to, representations and warranties contained in the Excluded Provisions, the Company and Selling Members shall have no liability with respect to Losses related to any claims under Section 8.1 or Section 8.2 until the total of all such Losses with respect to all such claims exceeds the Threshold, in which case the Company Parties shall be liable for all such Losses to the extent exceeding the Threshold up to and including the Cap. Any payment by any Company Party pursuant to Section 8.1(a) with respect to an Excluded Provision shall not be considered in determining whether the Threshold has been met or exceeded.

(b) The amount of any Losses for which an Investor Indemnified Party is entitled to indemnification under this Article VIII shall be made, determined and calculated without regard to any materiality qualification once it is determined that a particular representation and warranty so qualified by such terms is in fact breached.

8.8 Survival of Representations and Warranties. All of the representations and warranties set forth in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the Transaction for a period ending on the first anniversary of the Closing Date except that (i) the representations and warranties contained in Section 4.1 (Organization etc.), Section 4.2 (Power and Authority; Authorization etc.), Section 4.3 (Capitalization), Section 4.3 (No Conflict), Section 4.9(a) (Personal Property), Section 4.30 (Brokers), Section 5.1 (Organization etc.), Section 5.2 (Power and Authority; Authorization etc.), Section 5.3 (No Conflict), Section 5.4 (Purchase for Investment), Section 5.5 (Broker) and representations and warranties that are fraudulently or willfully breached contained herein shall survive indefinitely and (ii) the representations and warranties contained in Section 4.14 (ERISA), Section 4.20 (Taxes) and Section 4.22 (Environment) shall survive until sixty (60) days following the expiration of the applicable statute of limitations period or any extensions or waivers thereof. It is agreed that in the event notice of any claim for indemnification under this Agreement with respect to any inaccuracy or a breach of representation or warranty or with respect to any other matter shall have been given within the applicable survival period, the claims and rights to indemnification relating to such inaccuracies or breaches of representations and warranties or other matters that are the subject of such indemnification claim shall survive until such time as such claim is finally resolved.



8.10 Allocation of Indemnification Payments. The parties hereto agree that any indemnification payment pursuant to this Agreement shall be treated as an adjustment to the Contributed Value (as that term is defined in the Revised Operating Agreement) for Tax purposes.

8.11 Exclusive Remedy. Investor, Company and Selling Members acknowledge and agree that the foregoing indemnification provisions of this Article VIII shall be the exclusive remedy of Investor, Company and Selling Members with regard to any matters arising from or related to this Agreement, the Transaction Documents, the representations, warranties and covenants contained therein, and the transactions contemplated thereby, except with respect to the Selling Members' covenants under Section 9.1, for which Company shall have all the remedies described in Section 9.1(g).

ARTICLE IX

COVENANTS AFTER CLOSING

9.1 [Redacted]

[Redacted] Each of the Company Parties agrees that the Investor is relying on the covenants and agreements set forth in this Section 9.1, and that the consideration to be paid to the Company and received by the Selling Members pursuant to this Agreement, is sufficient consideration to make the covenants and agreements set forth herein enforceable.

[Redacted]

stand, the Term shall be deemed to be the longest period permissible by Law under the circumstances and geographic area covered shall be deemed to comprise the largest territory permissible by Law under the circumstances. The court in each case shall reduce the Term and/or the geographic area covered to permissible duration or size.

(g) Remedies. Each Selling Member acknowledges and agrees that the covenants set forth in this Section 9.1 are reasonable and necessary for the protection of the Company and the Business, that irreparable injury will result to the Company and the Business if any of the provisions contained in this Section 9.1 are breached, and that in the event of an actual or threatened breach of any of the provisions contained in this Section 9.1, the Company will have no adequate remedy at Law. Each Selling Member accordingly agrees that in the event of any actual or threatened breach of any of the provisions contained in this Section 9.1, the Company shall be entitled to such injunctive and other equitable relief, without the necessity of showing that monetary damages cannot be measured or posting any bond, as may be deemed necessary or appropriate by a court of competent jurisdiction. Nothing contained herein shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages which it is able to prove.

9.2 Tax Matter Covenants.

(a) Tax Returns. The Investor will be responsible for causing the Company [REDACTED] to prepare and file the Tax Returns for all Pre-Closing Periods, including all Straddle Periods. The Selling Members will have the right to review and comment on all such Tax Returns, which Tax Returns will be prepared in a manner consistent with past practice of the Company and its Subsidiaries provided that such past practice is in accordance with applicable law. Such Tax Returns shall be provided to the Selling Members no less than 30 days prior to the due date for such Tax Returns and Selling Members shall provide written comment on such Tax Returns to Investor no more than 20 days later. Investor will cause the Company and its Subsidiaries to make any changes reasonably requested by the Selling Members that are consistent with past practices of the Company and in accordance with applicable laws. The Selling Members shall pay to the Investor (from the Escrow Amount or pursuant to Section 8.1) an amount equal to all Taxes shown to be due on a Pre-Closing Period Tax Return and the portion of such Taxes shown to be due on a Straddle Period Tax Return which relates to the portion of such Straddle Period ending on the Closing Date within fifteen (15) days after the receipt of a bill from the Investor for such Taxes, or, if later, within five (5) days after the expiration of the period within which Selling Members may comment on the related Tax Returns. In the case of any Taxes that are payable for a Straddle Period, the portion of such Taxes that relate to the portion of such Straddle Period ending on the Closing Date shall be (i) in the case of Taxes based upon or related to income, gross or net sales or receipts, or with respect to any withholding Taxes, the amount that would be payable if the Straddle Period had ended as of close of business on the Closing Date and the books of the Company closed as of the close of business on such date; (ii) in the case of Taxes imposed on specific transactions or events, the Taxes imposed on specific transactions or events occurring on or before close of business on the Closing Date, including the Taxes described in Section 1.2; and (iii) in the case of Taxes imposed on a periodic basis, or in the case of any other Taxes not covered by clause (i) above or clause (ii) above, the amount of such Taxes for the entire Straddle Period multiplied by a fraction the numerator of which is the number of calendar days in the period ending on the

Closing Date and the denominator of which is the number of calendar days in the entire Straddle Tax Period. Investor shall provide Company and Selling Members with all such information as is appropriate to support the determination and allocation of Taxes for a Straddle Period.

(b) Tax Refunds. Any refunds (or equivalent benefits, such as credits) (“Refunds”) of Taxes in respect of the Company (on a consolidated basis and, if applicable, [REDACTED] relating to any Pre-Closing Period shall be for the account of the Investor; provided, however, that any such amounts received shall, at Company’s election, offset any obligation the Company may have under Article VIII hereof.

(c) Cooperation and Control of Tax Disputes. Within a reasonable time (but not more than 10 days) after the Investor or the Company receives notice of any contest, audit or other proceeding commencing related to any Tax Return with respect to any Pre-Closing Period (including Straddle Periods) of the Company or any of its Subsidiaries (and, if applicable, [REDACTED]) and such contest, audit or proceeding could reasonably result in a claim against Company or any of its Subsidiaries (on a consolidated basis and, if applicable, including the UK Entity) under this Section 9.2 (“Tax Contest”), the Company will notify Investor in writing of such Tax Contest (or, if Investor receives such notice, Investor will notify the Company). Except as set forth herein, with respect to a Tax Contest, the Company shall be entitled to control, in good faith, all proceedings taken in connection with such Tax Contest with counsel reasonably satisfactory to the Investor; provided, however, that (i) the Company shall promptly notify the Investor in writing of its intention to control such Tax Contest on behalf of the Company, and (ii) in the case of a Tax Contest related to Taxes of the Company or any of its Subsidiaries (and, if applicable, [REDACTED]) for a period beginning before and ending after the Closing Date, the Company and the Investor shall jointly control all proceedings taken in connection with any such Tax Contest. With respect to a Tax Contest for which Company has notified Investor of its intention to control such Tax Contest: (i) Company shall notify the Investor in writing that Company will indemnify Investor from and against the entirety of any adverse consequences that Investor or the Company may suffer from, arising out of or relating to the nature of or caused by the Tax Contest, and (ii) the Company shall defend such Tax Contest actively and diligently. Notwithstanding anything to the contrary contained herein, in the event that (x) any condition set forth in the immediately preceding sentence is or becomes unsatisfied after reasonable written notice and opportunity to cure, or (y) settlement of, or an adverse judgment with respect to, the Tax Contest may be expected to have a material adverse effect on the business or may materially increase the Tax liability of the Company or the Investor after the Closing Date, the Investor shall be entitled to jointly control the defense of such Tax Contest or any compromise or settlement. No Tax Contest shall be settled or resolved without the Investor’s consent, which consent shall not be unreasonably delayed or withheld. The Investor and the Selling Members shall use their reasonable efforts to provide the Company with such assistance as may be reasonably requested in connection with a Tax Contest controlled solely or jointly by the Company.

(d) Cooperation. The Company and Selling Members agree to cooperate with the Investor, and the Investor agrees to cooperate with the Company and Selling Members, to the extent necessary in connection with the filing of any information return or similar document relating to the payment of the Purchase Price and issuance to Investor of Common Units.

(e) **Dispute Resolution.** If the Company and Investor do not agree as to any question that arises under this **Section 9.2**, either of them, after giving written notice to the other, may refer the question to a nationally recognized accounting firm independent from the parties and acceptable to the Company and Investor (the “**Accounting Firm**”) for resolution. After giving each party an opportunity to present its position, Accounting Firm will within 45 days after such referral decide the question. The decision of the Accounting Firm will be final and will bind both parties. Accounting Firm’s fees will be borne equally by the Company and Investor.

9.3 Post-Closing Cooperation. The parties to this Agreement will use their reasonable efforts, and will cooperate with each other of them, to secure all material Consents from third parties as shall be required to enable each of them to effect the transactions contemplated hereby, and will otherwise use their commercially reasonable efforts to cause the consummation of such transactions in accordance with the terms and conditions hereof. Each party will execute all documents and take such other actions as the other party may reasonably request in order to consummate the transactions provided for herein and to accomplish the purposes of this Agreement.

9.4 Access to Information; Litigation Support.

(a) After the Closing, to the extent specifically permitted under the Revised Operating Agreement, the Company will give, or cause to be given, to the Investor and its representatives, during normal business hours, such reasonable access (upon reasonable notice and in a manner as to not unreasonably interfere with normal business operations) to the personnel, properties, titles, contracts, books, records, files and documents and, at the Company’s expense, copies of titles, contracts, books, records, files and documents but only to the extent necessary to allow the Investor to obtain information it needs in connection with the preparation and any audit of any Tax Returns pertaining to the Business for which Investor is responsible under this Agreement to prepare and file.

(b) In the event and for so long as any party hereto actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving Company or any of its Subsidiaries, each of the other parties hereto shall cooperate with him, her, or it and his, her, or its counsel in the defense or contest, make available his, her, or its personnel, and provide such testimony and access to his, her, or its books and records as shall be necessary in connection with the defense or contest, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification therefor under **Article VIII** above).

9.5 [Intentionally Omitted]

9.6 Public Announcements. From and after the Closing, no party hereto or any of their respective Affiliates will issue or cause the publication of any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby without

the prior consent of the Company and Investor, which consent will not be unreasonably withheld or delayed; provided, however, that nothing herein will prohibit any party from issuing or causing publication of any such press release or public announcement to the extent that such party determines such action to be required by Law, in which case the party making such determination will, if practicable in the circumstances, use reasonable efforts to allow the other parties reasonable time to comment on such press release or announcement in advance of its issuance.

ARTICLE X

TERMINATION

10.1 Termination. This Agreement may be terminated at any time before the Closing:

(a) by mutual written consent of the Investor and Company;

(b) by the Investor if there has been a material misrepresentation or breach on the part of the Company Parties of the representations, warranties, or covenants set forth in this Agreement to be performed by any Company Party or if events have occurred which have made it impossible to satisfy a condition precedent to the Investor's obligations to consummate the transactions contemplated hereby unless, in either case, Investor's willful or knowing breach of this Agreement has caused the condition to be unsatisfied;

(c) by the Company if there has been a material misrepresentation or breach on the part of the Investor of the representations, warranties, or covenants set forth in this Agreement to be performed by it or if events have occurred which have made it impossible to satisfy a condition precedent to the Company Parties' obligations to consummate the transactions contemplated hereby unless, in either case, a Company Party's willful or knowing breach of this Agreement has caused the condition to be unsatisfied; or

(d) by the Investor or the Company if the Closing has not occurred on or before [REDACTED]; provided, however, that neither the Investor nor the Company shall be entitled to terminate this Agreement pursuant to this Section 10.1(d) if such party's willful or knowing breach of this Agreement has prevented the consummation of the transactions contemplated hereby at or before such time.

10.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 10.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party to any other party under this Agreement, except that the provisions of this Section 10.2 and Sections 9.1, 12.1, 12.3, 12.4, 12.5, 12.6 and 12.7 shall continue in full force and effect and except that nothing herein shall relieve any Party from liability for any breach of this Agreement before such termination.

ARTICLE XI

DEFINITIONS

“**Accident**” has the meaning set forth in Section 4.21(d)(i).

“**Affiliate**” means, with respect to any Person: (i) any other Person directly or indirectly controlling, controlled by or under common control with the subject Person, (ii) any direct or indirect ownership interest in excess of [REDACTED] in any other entity including for avoidance of doubt [REDACTED] or (iii) any officer, director, trustee, managing member or general partner of the subject Person, provided that, for the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by Contract or otherwise. Notwithstanding the foregoing, neither the Investor nor any member of the Investor Indemnified Group shall be considered an “Affiliate” of the Company for purposes of this Agreement.

“**Agreement**” has the meaning set forth in the Preamble hereof.

“**Allocable Portion**” means, with respect to the share of any Selling Member in a particular amount, that percentage equal to such Selling Member’s Percentage Interest (as that term is defined in the Existing Operating Agreement) as of immediately prior to either the Closing Date or, if Company adopts the Revised Operating Agreement prior to the Closing Date, the Revised Operating Agreement’s effective date, whichever occurs first.

“**Assets**” has the meaning as set forth in Section 4.9(a) hereof.

“**Audited Financial Statements**” has the meaning set forth in Section 4.6(a) hereof.

“**Budget**” refers to the Company’s annual budget prepared in accordance with the requirements in the Revised Operating Agreement.

“**Business**” has the meaning set forth in the Recitals hereof.

“**Business Day**” means any day other than a Saturday, Sunday or day on which commercial banks are authorized or required by law to close in Chicago, Illinois.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Cash Consideration**” has the meaning set forth in Section 1.1(c) hereof.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

“**Claim Notice**” has the meaning set forth in Section 8.5(a) hereof.

“**Closing**” has the meaning set forth in Section 2.1(a) hereof.

“**Closing Common Unit Price**” means [REDACTED] per Common Unit.

“**Closing Date**” has the meaning set forth in Section 2.1(a) hereof.

“**COBRA**” has the meaning set forth in Section 4.14(h) hereof.

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

“**Commercial Software**” means packaged commercially available software programs generally available to the public which (a) have been licensed to the Business pursuant to non-negotiated end-user licenses, (b) are used in the Business but are not a component of or incorporated into any product sold by the Business and (c) with respect to each such end-user license agreement, have a cumulative cost or license fee for all software and rights to use thereunder and ongoing maintenance fees of less than [REDACTED]

“**Common Units**” has the meaning given to such term in the Recitals hereto.

“**Company**” has the meaning given to such term in the Introductory Paragraph to this Agreement.

“**Company Governmental Authorizations**” has the meaning set forth in Section 4.10(b) hereof.

“**Company Indemnified Party**” has the meaning set forth in Section 8.3 hereof.

“**Company’s Knowledge**” or “**Knowledge**” means, [REDACTED]
[REDACTED]
[REDACTED]

“**Company Parties**” means, collectively, the Company, its Subsidiaries and Selling Members, and, individually, each a “**Company Party**”.

“**Company Proprietary Rights**” has the meaning set forth in Section 4.13(a) hereof.

“**Company Transaction Expenses**” means all costs and expenses incurred by any Company Party through and including the Closing Date in negotiating and preparing this Agreement and the Transaction Documents and in closing and carrying out the Transaction.

“**Confidential Information**” has the meaning set forth in Section 9.1(c) hereof.

“**Consent**” means any approval, consent, ratification, permission, waiver, authorization (including any Governmental Authorization), notification, authorization, declaration, filing or registration of, with or to any Person.

“**Contract**” means any agreement, contract, license, lease, purchase order, obligation, promise, or undertaking (whether written or oral and whether express or implied).

“**Defense Counsel**” has the meaning set forth in Section 8.5(a) hereof.

“**Defense Notice**” has the meaning set forth in Section 8.5(a) hereof.

“**Direct Claim**” has the meaning set forth in Section 8.6 hereof.

“**Employee Benefit Plan**” means any of the following which Company sponsors, maintains or makes contributions to, or with respect to which Company or any ERISA Affiliate has or had any Liabilities at any time which covers employees and former employees of the Business (whether written, unwritten or terminated): (a) any “employee welfare benefit plan,” as defined in Section 3(1) of ERISA, including, but not limited to, any medical plan, life insurance plan, short-term or long-term disability plan, dental plan, and sick leave; (b) any “employee pension benefit plan,” as defined in Section 3(2) of ERISA, including, but not limited to, any excess benefit, top hat or deferred compensation plan or any nonqualified deferred compensation or retirement plan or arrangement or any qualified defined contribution or defined benefit plan; or (c) any other plan, policy, program, arrangement or agreement which provides employee benefits or benefits to any current or former employee, dependent, beneficiary, director, independent contractor or like person, including, but not limited to, any severance agreement or plan, personnel policy, vacation time, holiday pay, service award, moving expense reimbursement programs, tool allowance, safety equipment allowance, material fringe benefit plan or program, bonus or incentive plan, stock option, restricted stock, stock bonus or deferred bonus plan, salary reduction, change-of-control or employment agreement (or consulting agreement with a former employee).

“**Environment**” means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, ambient air, structures, and any environment medium.

“**Environmental Law**” means all federal, state and local laws, statutes, codes, regulations, rules, ordinances, orders, standards, permits, licenses, actions, policies, principles of common law and other requirements (including consent decrees, judicial decisions, administrative orders and self-implementing closure requirements) relating to the protection of the environment and/or public or worker health and safety, land use, and comprehensive planning rules and regulations, all as amended or reauthorized, all as amended or reauthorized, including, without limitation, the applicable provisions of state and federal department of transportation regulations.

“**Environmental Permits**” means all required permits, licenses, certifications and approvals relating to the operation of the Business pursuant to all Environmental Laws.

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

“**ERISA Affiliate**” means Company, any of its Subsidiaries, and any predecessor of any of them and any other Person who constitutes or has constituted all or part of a controlled group or has been or is under common control with, or whose employees were or are treated as

employed by, Company, any of its Subsidiaries and/or any predecessor or any of them, under Section 414 of the Code.

“**Escrow Agent**” means [REDACTED].

“**Escrow Amount**” means \$[REDACTED].

“**Excluded Provisions**” means, collectively, Section 4.2 (Authorization), Section 4.3 (Capitalization), Section 4.4 (No Conflict), Section 4.5 (No Consent Required), Section 4.10 (Compliance with Laws; Governmental Authorizations), Section 4.14 (ERISA), Section 4.20 (Taxes), Section 4.21 (Litigation), Section 4.30 (Brokers or Finders), Section 5.2 (Power and Authority), Section 5.3 (No Conflict), Section 5.5 (Brokers and Finders), and Section 5.6 (No Consent Required), and each is hereinafter referred to as a “**Excluded Provision**.”

“**Existing Operating Agreement**” means the now existing and in effect Operating Agreement of the Company.

“**Financial Statements**” means, collectively, the Audited Financial Statements and the Interim Financial Statements.

“**GAAP**” means United States generally accepted accounting principles.

“**General Liability Policies**” has the meaning set forth in Section 4.19 hereof.

“**Governmental Authorization**” means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement including without limitation all those required under the STB Act and permits required by the Federal Communication Commission.

“**Governmental Body**” means any:

(a) U.S. Federal, state, county, municipal, city, town village, district, or other jurisdiction or government of any nature including the U.K. and any political subdivision thereof;

(b) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or other entity and any court or other tribunal); or

(c) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Hazardous Material” means “hazardous substances,” as defined by CERCLA; “hazardous wastes,” as defined by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; petroleum or petroleum products; radioactive material, including, without limitation, any source, special nuclear, or by-product material, as defined in 42 U.S.C. §2011 et seq.; asbestos in any form or condition; polychlorinated biphenyls; and any other material, substance or waste which is regulated under any Environmental Law or which may give rise to liabilities or other obligations under any Environmental Law.

“Income Tax” means any Tax which is imposed or determined with reference to (i) gross or net income or profits (including, but not limited to, capital gains, gross receipts or minimum tax) or (ii) multiple bases, including corporate franchise, gross receipts, net worth, privilege, doing business or occupation taxes, if one of the bases is listed in clause (i), together with any interest and penalties, fines, additions to tax or additional amounts imposed by any tax authority with respect to such Tax.

“Indebtedness” of any Person means the principal of, premium, if any, unpaid interest on, and other amounts owing in respect of, (a) indebtedness for borrowed money including any capitalized lease obligations, (b) indebtedness for borrowed money guaranteed, directly or indirectly, in any manner by such Person, or in effect guaranteed, directly or indirectly, in any manner by such Person through an agreement, contingent or otherwise, to supply funds to, or in any other manner invest in, the debtor, or to purchase indebtedness for borrowed money, or to purchase and pay for property if not delivered or pay for services if not performed, primarily for the purpose of enabling the debtor to make payment of the indebtedness for borrowed money or to assure the owners of the indebtedness for borrowed money against loss, (c) all indebtedness for borrowed money secured by any Lien upon property owned by such Person, even though such Person has not in any manner become liable for the payment of such indebtedness, and (d) renewals, extensions and refunding of any such indebtedness for borrowed money.

“Indemnified Party” has the meaning set forth in Section 8.5(a) hereof.

“Indemnifying Party” has the meaning set forth in Section 8.5(a) hereof.

“Insolvency Laws” means any bankruptcy, insolvency, reorganization, moratorium or other similar laws, rules, orders and regulations of any Governmental Body affecting the enforcement of creditors rights generally, and general principles of equity (regardless of whether enforcement is considered in a proceeding in law or equity).

“Insurance Policies” has the meaning set forth in Section 4.19 hereof.

“Interim Financial Statements” has the meaning set forth in Section 4.6(b) hereof.

“Investor” has the meaning set forth in the Introductory Paragraph to this Agreement.

“Investor Indemnified Party” has the meaning set forth in Section 8.1 hereof.

“**Investor Units**” shall mean [_____] Common Units of the Company being issued to Investor at the Closing pursuant to the Revised Operating Agreement.

“**Latest Balance Sheet**” means the unaudited pro forma balance sheet of the Business as at the Latest Balance Sheet Date.

“**Latest Balance Sheet Date**” means December 31, 2013.

“**Leased Property**” has the meaning set forth in Section 4.11(b) hereof.

“**Leases**” has the meaning set forth in Section 4.11(b)(i) hereof.

“**Legal Requirement**” means any U.S. Federal, state, local, municipal or other constitution, ordinance, regulation, statute, rule or other law adopted, enacted, implemented, or promulgated by or under the authority of any Governmental Body or by the eligible voters of any jurisdiction, and any agreement, approval, consent, injunction, judgment, license, Order, or permit by or with any Governmental Body or to which Company or any of its Subsidiaries is a party or by which Company or any of its Subsidiaries is bound including without limitation those required under the HSR Act and STB Act.

“**Liabilities**” means debts, liabilities, obligations, expenses or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, and each is hereinafter referred to as a “**Liability**.”

“**Liens**” means any liens, hypothecations, mortgages, charges, security interests, pledges and other encumbrances and claims of any nature.

“**Losses**” has the meaning set forth in Section 8.1 hereof.

“**Major Customers**” means the [ten (10)] largest customers of the Company and Subsidiaries on a consolidated basis as measured by the dollar amount of the revenue received by the Company and Subsidiaries on a consolidated basis for the twelve month period ending [December 31, 2013] or for a time period otherwise stated. Customers include other railroads interconnected with those railroads owned by the Company or any of its Subsidiaries.

“**Major Suppliers**” means the [ten (10)] largest vendors of the Company and Subsidiaries on a consolidated basis as measured by the dollar amount of the revenue received by the Company and Subsidiaries on a consolidated basis for the twelve month period ending [December 31, 2013] or for a time period otherwise stated.

“**Material Adverse Effect**” means any change or effect that individually or when taken together with all other changes or effects that have occurred during any relevant period of time prior to the date of determination of the occurrence of such change or effect, is or could reasonably be expected to be materially adverse to the Business, including the condition (financial or otherwise) or results of operations of the Company and any of its Subsidiaries or the Business.

“**Material Contracts**” has the meaning set forth in Section 4.12(a) hereof.

“**Member Notes**” means the promissory notes issued by Company as further described in Exhibit 8 hereto.

“**Net Working Capital**” means the current assets of the Company *minus* the current liabilities (including Taxes) of the Company, determined in accordance with GAAP applied on a basis consistent with that employed by the Company in preparing the Financial Statements. For avoidance of doubt, the following will not be taken into account in determining Net Working Capital: [REDACTED] (b) the obligations of the Company to pay Company Transaction Expenses or any cash actually used to pay Company Transaction Expenses and (c) any and all payables of the Company owed to any of its Subsidiaries or Affiliates or or under any of the Member Notes.

“**New Common Units**” shall have the meaning as set out in Section 8.4(a) hereof.

“**New Preferred Units**” shall have the meaning as set out in Section 8.4(a) hereof.

“**Non-Income Tax**” means any Tax other that is not an Income Tax.

“**Order**” means any award, injunction, judgment, order, ruling, subpoena, or verdict or other decision entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

“**Organizational Documents**” means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person (e.g., a certificate of formation, articles of organization or certificate of limited partnership), and any agreement governing such Person (e.g., a limited liability company agreement, operating agreement or partnership agreement); and (c) any amendment to any of the foregoing.

“**Owned Real Property**” has the meaning set forth in Section 4.11(a) hereof.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Payoff**” is defined in Section 1.1(d).

“**Permitted Liens**” means with respect to items of Owned Real Property only (a) Liens for Taxes not yet due and payable or which are being contested in good faith through appropriate proceedings and included as a current liability in Company’s Net Working Capital, (b) statutory Liens of landlords for amounts not yet due and payable, and (c) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for amounts not yet due and payable or which are being contested in good faith through appropriate proceedings.

“**Person**” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated association, corporation, other entity or Governmental Body.

“**Pre-Closing Period**” means _____.

“**Pre-Closing Period Tax Return**” means _____.

“**Proceeding**” means any claim, suit, litigation, arbitration, hearing, audit, charge, investigation, or other action (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body, arbitrator or mediator.

“**Profits Interests**” shall have the meaning set out in the Revised Operating Agreement.

“**Proprietary Rights**” means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, domain names, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights (both statutory and common law), and all applications, registrations, and renewals in connection therewith, (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, templates, patterns, formulas, algorithms, compositions, production and business processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including data and related documentation), in both source code and object code formats, other than Commercial Software, (g) all other proprietary rights, and (h) all copies and tangible embodiments thereof (in whatever form or medium).

“**Purchase Price**” is defined in Section 1.1(b).

“**Rail Facilities**” has the meaning set forth in Section 4.9(a) hereof.

“**Real Property**” has the meaning set forth in Section 4.11(b) hereof.

“**Redemption**” is defined in Section 1.1(d).

“**Redemption Price**” is defined in Section 1.1(d).

“**Release**” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, migration or dumping into the Environment in violation of applicable Environmental Laws or in a manner, quantity or conditions that could result in liability pursuant to Environmental Laws.

“**Representatives**” means officers, directors, managers, employees, agents, attorneys, accountants, advisors and authorized representatives.

“**Required Contract Consents**” has the meaning set forth in Section 4.12(f) hereof.

[REDACTED]

ARTICLE XII

MISCELLANEOUS

12.1 Notices, Consents, etc. Any notices, consents or other communication required to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (a) delivered personally or (b) delivered by a recognized overnight courier service, to the parties at the addresses as set forth below or at such other addresses as may be furnished in writing.

If to the Company:

Iowa Pacific Holdings, LLC
118 South Clinton Street, Suite 400
Chicago, IL 60661-5773
Attn: Mr. Edwin E. Ellis

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

Lewis & Gellen, LLP
200 West Adams Street, Suite 1900
Chicago, Illinois 60606
Attn: Gerald Haberkorn

If to the Selling Member:

c/o _____

Attn: _____

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

c/o _____

Attn: _____

If to the Investor:

Equity Group Investments, Inc.

2 North Riverside Plaza, Suite 600
Chicago, IL 60606



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

Gould & Ratner LLP
222 North LaSalle Street, Suite 800
Chicago, IL 60601
Attn: Mr. Fredric D. Tannenbaum

Date of service of such notice shall be (x) the date such notice is personally delivered or (y) one (1) Business Day after the date of delivery to the overnight courier if sent by overnight courier.

12.2 Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.

12.3 Amendment and Waiver. This Agreement may be amended, or any provision of this Agreement may be waived; provided that any such amendment or waiver will be binding on the Company only if such amendment or waiver is set forth in a writing executed by the Company; provided further that any such amendment or waiver will be binding upon a Selling Member only if such amendment or waiver is set forth in a writing executed by such Selling Member. In the event that any decision or agreement is required of Company and Selling Member hereunder, each Selling Member does hereby irrevocably, unconditionally and absolutely designate, authorize, appoint and direct the Company to act in such Selling Member's stead and place, such agency coupled with an interest, provided that, Company is not authorized without the consent of such Selling Member to reduce the Redemption Price, Redemption or payment terms to such Selling Member or otherwise impose on such Selling Member any terms or conditions which are unreasonable or which the Company does not also agree to have imposed on it. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other breach.

12.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS RULES OF CONFLICTS OF LAW.

12.5 Consent to Jurisdiction; Forum Selection. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED EXCLUSIVELY IN THE FEDERAL COURTS LOCATED EXCLUSIVELY IN CHICAGO, ILLINOIS. THE AFOREMENTIONED CHOICE OF VENUE IS INTENDED BY THE PARTIES TO BE MANDATORY AND NOT PERMISSIVE IN NATURE, THEREBY PRECLUDING THE POSSIBILITY OF LITIGATION BETWEEN THE PARTIES WITH RESPECT TO OR ARISING OUT OF THIS

AGREEMENT IN ANY JURISDICTION OTHER THAN THOSE SPECIFIED IN THIS SECTION 12.5. EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON-CONVENIENS OR SIMILAR DOCTRINE OR TO OBJECT TO VENUE WITH RESPECT TO ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS SECTION 12.5, AND STIPULATES THAT THE FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER SUCH PARTY FOR THE PURPOSE OF LITIGATING ANY DISPUTE, CONTROVERSY OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. EACH PARTY HEREBY AUTHORIZES AND ACCEPTS SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST IT AS CONTEMPLATED BY THIS SECTION 12.5 BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID, TO ITS ADDRESS FOR THE GIVING OF NOTICES AS SET FORTH IN THIS AGREEMENT, OR IN THE MANNER SET FORTH IN SECTION 12.1 OF THIS AGREEMENT FOR THE GIVING OF NOTICE. ANY FINAL JUDGMENT RENDERED AGAINST A PARTY IN ANY ACTION OR PROCEEDING SHALL BE CONCLUSIVE AS TO THE SUBJECT OF SUCH FINAL JUDGMENT AND MAY BE ENFORCED IN OTHER JURISDICTIONS IN ANY MANNER PROVIDED BY LAW.

12.6 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS OR EVENTS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THE PARTIES HERETO EACH AGREE THAT ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION SHALL BE TRIED BY THE COURT WITHOUT A JURY. EACH OF THE PARTIES HERETO FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY SUCH LEGAL PROCEEDING IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LEGAL PROCEEDING IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED.

[REDACTED]

12.8 Assignment. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but will not be assignable or delegable by any party without the prior written consent of the other parties, provided, however, that the Company shall be allowed to assign its rights and benefits hereto to the lenders of the Company or any Affiliate of the Company as collateral for security purposes. Each of the Company and Selling Members agrees to provide any acknowledgment or consent required by any such lender in connection with any assignment referenced above.

12.9 Entire Agreement. This Agreement, the Preamble, the Recitals and all the Schedules and Exhibits attached to this Agreement (all of which shall be deemed incorporated in the Agreement and made a part hereof) and the other Transaction Documents set forth the entire understanding of the parties, and supersede and preempt all prior oral or written understandings and agreements with respect to the subject matter hereof (including, but not limited to, any term sheet and/or letter of intent), and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof, and may be modified only by instruments signed by all of the parties hereto.

12.10 No Third-Party Beneficiary. This Agreement shall inure exclusively to the benefit of and be binding upon the parties hereto and their respective successors, assigns, executors and legal representatives and any Person entitled to indemnification under Article VIII. Nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and assigns and any Person entitled to indemnification under Article VIII any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12.11 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement, the Transaction Documents and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including .pdf files), shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties, except that the failure of any party to comply with such a request shall not render this Agreement invalid or unenforceable. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

12.12 Headings; Interpretative Matters. The subject headings of Articles and Sections of this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions. Unless the context otherwise requires, (a) all references to Articles, Sections or Schedules are to Articles, Sections or Schedules in this Agreement, (b) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with GAAP, (c) words in the singular or plural include the singular and plural, pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter and (d) the term “including” shall mean by way of example and not by way of limitation. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or questions of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no

presumption or burden of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement. Unless expressly provided herein to the contrary, including as provided in Section 12.13 below, any obligations of the Company Parties incurred as a result of any term or provision of this Agreement or any Transaction Document shall be joint and several in nature.

12.13 Nature of Selling Members' Obligations. The covenants of each Selling Member hereunder and in any Transaction Documents, and the representations and warranties of each Selling Member in Article III above, are individual and not joint or several obligations. This means that the particular Selling Member making the representation, warranty or covenant shall be solely responsible to the extent provided under Section 8.2 above for the Losses Investor may suffer as a direct result of such Selling Member's breach thereof. The remainder of representations and warranties in this Agreement, which are set out in Article IV above, are based on each Selling Member's Allocable Portion of any Investor Indemnifiable Damages Investor may suffer as a result of a breach thereof as set forth in Section 8.1 above.

[Signature Page Follows]

[Signature Page of Unit Purchase and Investment Agreement.]

IN WITNESS WHEREOF, the parties have executed this Unit Purchase and Investment Agreement as of the date first written above.

IOWA PACIFIC HOLDINGS, LLC

By: _____

Name: _____

Its: _____

SELLING MEMBERS: [will there be any?]

INVESTOR:

IPH INVESTORS, LLC

By: _____

Name: _____

Its: _____

EXHIBIT 1

Current Ownership and Common Units to be Redeemed or Sold

Member Name and Address	Common Units Currently Owned	Common Units To be Sold or Redeemed	Redemption Price
██████████	██		
██████████	██		
██████████████████	██		
██████████████████	██		
██████████	██		
██████████████████	██		
██████████████████	██		
██████	██		
---	---		
██████	██████	---	

EXHIBIT 2

Use of Proceeds

- See Exhibit 1, Column on Redemption Price
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Working Capital as set forth on the Budget (and as otherwise modified by the Board (as defined in the Revised Operating Agreement))

EXHIBIT 3

Amended and Restated Articles of Organization

EXHIBIT 4

Amended and Restated Operating Agreement

EXHIBIT 5



EXHIBIT 6



EXHIBIT 7



EXHIBIT 8

