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FEE RECEIVED

NOV 18 2009

**SURFACE
TRANSPORTATION BOARD**

November 18, 2009

Via HAND DELIVERY

Chief, Section of Administration,
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

FILED

NOV 18 2009

**SURFACE
TRANSPORTATION BOARD**



**Re: Finance Docket No. 35320, Koch Industries, Inc.—Continuance in Control
Exemption—KM Railways, LLC**

To Whom It May Concern:

Enclosed for filing in the above-captioned docket are the original plus ten copies of a Notice of Exemption by Koch Industries, Inc. We have enclosed a check for the filing fee in the amount of \$1,400 and a CD containing the Notice in Word format and PDF format. An additional 20 copies of the relevant maps are also included, as per 49 C.F.R. § 1180.6(a)(6).

Also enclosed for filing are the original plus ten copies of a Motion for a Protective Order. We have included a sealed envelope marked "CONFIDENTIAL—FILED UNDER SEAL" in which we are filing a copy of the asset purchase agreement referenced in the Notice of Exemption filed in this docket. We have included a redacted public version of the asset purchase agreement in the Notice of Exemption.

Please date stamp the additional copy of this Notice and Motion for a Protective Order and return it with our messenger. We appreciate your attention to this matter.

**ENTERED
Office of Proceedings**

NOV 18 2009

**Part of
Public Record**

Sincerely,

David Coburn (16)

David H. Coburn

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Finance Docket No. 35320

**KOCH INDUSTRIES, INC. –
CONTINUANCE IN CONTROL EXEMPTION –
KM RAILWAYS, LLC**

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

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David H. Coburn
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1330 Connecticut Avenue, N.W.
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202-429-8063

Attorney for Koch Industries, Inc. and KM
Railways, LLC

Dated: November 18, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35320

**KOCH INDUSTRIES, INC. –
CONTINUANCE IN CONTROL EXEMPTION –
KM RAILWAYS, LLC**

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

Pursuant to the regulations of this Board at 49 C.F.R. § 1180.2(d)(2) and 1180.4(g), non-carrier Koch Industries, Inc., a Kansas corporation, (“Koch Industries” or “Applicant”), files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. §§ 11323-11325. This Verified Notice of Exemption is being filed to permit Koch Industries to continue in control of KM Railways, LLC (“KMR”), an indirectly owned subsidiary of Koch Industries, once KMR becomes a Class III railroad. KMR is concurrently filing in STB Finance Docket No. 35321 for an exemption from 49 U.S.C. §10901 to acquire certain of the assets of Old Augusta Railroad, LLC, another Class III railroad owned indirectly and controlled by Koch Industries.

In support of this Verified Notice, Koch Industries submits the following information:

49 C.F.R. § 1180.6(a)(1)(i): Brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel

KMR is a direct subsidiary of KM Strategic Investments, LLC (“KMSI”), an indirect

subsidiary of Koch Industries, Inc. Pursuant to an Asset Purchase Agreement dated November 18, 2009, KMR has agreed to purchase the assets of the Old Augusta Railroad, LLC (“OAR”), including the track that constitutes the rail line operated by OAR. OAR is a Class III common carrier by rail which currently owns and operates an approximately 2.5 mile short-line railroad in Mississippi. The rail line is located in Perry County and extends between New Augusta (Station No. FSAC 10) and Augusta (Station No. FSAC 20). There are no branch lines and no mile posts. The line serves a pulp mill and connects with the Canadian National Railway Company. *See Old Augusta R.R., LLC—Acquisition & Operation Exemption—Assets of Old Augusta R.R. Co.*, STB Finance Docket No. 34493 (served Apr. 21, 2004).

All rail operating assets transferred in ownership to KMR will be leased back to the OAR, and OAR will therefore continue to operate the railroad. This purchase/lease transaction is part of an internal corporate reorganization.

KMR has concurrently filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire and operate the 2.5 miles of OAR railroad track. *See KM Railways, LLC—Acquisition and Operation Exemption—Old Augusta Railroad, LLC*, STB Finance Docket No. 35321. Upon consummation of the transaction that is subject to STB Finance Docket No. 35321, KMR will become a Class III carrier. OAR has concurrently filed a verified notice of exemption under 49 C.F.R. § 1150.41 to lease and operate the 2.5 miles of railroad track. *See Old Augusta Railroad, LLC – Lease and Operation Exemption—KM Railways, LLC*, STB Finance Docket No. 35319.

Koch Industries currently controls, pursuant to STB exemption, three Class III railroads. These are as follows:

Old Augusta Railroad, LLC, described above. This railroad is currently owned by GP

Cellulose, LLC, which is an indirect wholly-owned subsidiary of Koch Industries.

Blue Rapids Railway Company, LLC (“BRR”), which operates a 10 mile short-line railroad between Marysville, KS and Bestwall, KS, connecting at Marysville with the Union Pacific Railroad. BRR’s direct parent is Georgia-Pacific Gypsum LLC, which is an indirect wholly-owned subsidiary of Koch Industries.

Moscow Camden and San Augustine Railroad, LLC (“MCSA”) is a 6.9 mile short-line railroad that operates between a paper mill at Camden, Texas and Moscow, Texas, where it connects with the Union Pacific Railroad. MCSA’s direct parent is Georgia-Pacific Wood Products South LLC, an indirect wholly owned subsidiary of Koch Industries.

Koch Industries’ control over these railroads was exempted from the Board’s regulatory approval requirements in *Koch Forest Products, Inc. and Koch Industries, Inc. – Acquisition of Control Exemption – Gloster Southern R.R. Co. & Blue Rapids Ry. Co.*, STB Finance Docket No. 34784 (served Dec. 28, 2005); *Old Augusta Railroad, LLC – Acquisition and Operation Exemption – Assets of Old Augusta Railroad Co.*, STB Finance Docket No. 34493 (served Apr. 21, 2004); *Koch Industries, Inc – Continuance in Control Exemption – Moscow Camden and San Augustine Railroad LLC*, STB Finance Docket No. 34991 (served Feb. 16, 2007).

This transaction satisfies the criteria for class exemption for control set forth at 49 C.F.R. § 1180.2(d)(2). KMR does not connect with any other railroads owned or controlled by Koch Industries, this transaction is not part of a series of anticipated transactions that would connect the Koch Industries-controlled railroads with each other, and the transaction does not involve a Class I carrier.

The full name and address of the applicant is as follows:

Koch Industries, Inc.
4111 East 37th Street North

Wichita, KS 67220

Any questions concerning this Notice should be sent to Koch Industries' representative at the following address:

David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@steptoe.com
202-429-8063

49 C.F.R. § 1180.6(a)(1)(ii): Proposed schedule for the proposed transaction

On October 27, 2009, KMSI organized KMR as a Delaware LLC. On November 18, 2009, KMR signed an Asset Purchase Agreement to acquire, among other things, certain of the assets of the OAR, including its approximately 2.5 mile short-line railroad. KMR will also acquire certain property rights to the land underlying the track. KMR will lease the track and other rail operating assets back to the OAR, which will provide operations over the line on behalf of KMR. KMR will retain a common carrier obligation on the line. The transaction will be consummated on or after December 18, 2009.

49 C.F.R. § 1180.6(a)(1)(iii): Intended purpose of the proposed transaction

The proposed transaction is an internal reorganization for corporate reasons. There are no current plans to change the operations currently being conducted by OAR, which will continue to operate 2.5 miles of rail trackage pursuant to a lease agreement with KMR. The transaction will not have any adverse impact on rail operations or competition.

49 C.F.R. § 1180.6(a)(5): List of the States containing any part of the applicant's property

Upon acquiring the rail line from OAR, KMR will own a rail line Mississippi.

49 C.F.R. § 1180.6(a)(6): Map (Exhibit 1)

A map illustrating the rail lines of Koch Industries, including the rail lines to be acquired by KMR, is attached as Exhibit 1. Koch Industries is filing 20 unbound copies of the map with the Board.

49 C.F.R. § 1180.6(a)(7)(ii): Agreement (Exhibit 2)

A copy of the November 18, 2009 Asset Purchase Agreement between KMR and OAR is being submitted to the STB under separate cover with a motion for protective order. A redacted public version of the Asset Purchase Agreement is being submitted for filing.

Labor Protection:

Because KMR will become a Class III rail carrier, no labor protection may be imposed on this transaction pursuant to 49 U.S.C. § 11326(c).

Environmental and Historic Impacts:

Pursuant to 49 C.F.R. § 1105.6(c)(2), environmental documentation normally need not be prepared for a transaction that will not result in a diversion of (1) more than 1,000 rail carloads a year to motor carriage, or (2) an average of 50 carloads per mile year for any part of these lines to motor carriage or for a transaction that will not result in (a) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines, (b) an increase of rail yard activity of at least 100 percent, or (c) an average increase in truck traffic or more than 10 percent of the average daily traffic or 50 vehicles a day. This transaction will not meet any of the above thresholds nor result in any operational changes. Also, this transaction does not contemplate any changes relative to the transportation of any ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

Further, transactions involving "common control through stock ownership or similar

action” are exempt from the historic reporting requirements of 49 C.F.R. § 1105.8(a) if the transaction “will not substantially change the level of maintenance of railroad property.” 49 C.F.R. § 1105.8(b)(3). No historic report is required here because no such changes are anticipated as a result of the transaction.

Respectfully submitted,

David Coburn (KG)

David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@steptoe.com
202-429-8063

Attorney for Koch Industries, Inc. and KM
Railways, LLC

November 18, 2009

VERIFICATION

State of Kansas)

County of Sedgwick)

Mark E. Humphrey, being duly sworn, deposes and says that he is the Senior Vice President – Tax and Assistant Treasurer of Koch Industries, Inc.; that he has read the foregoing Notice of Exemption, that he has personal knowledge of the facts asserted therein, and that he certifies the same are true as stated.

Executed on November 18, 2009.



Mark E. Humphrey
Senior Vice President – Tax and
Assistant Treasurer
Koch Industries, Inc.

SUBSCRIBED AND SWORN TO

Before me this 18 th day of November, 2009



Ruth E. Williams
Notary Public

My commission expires: 9/24/2010



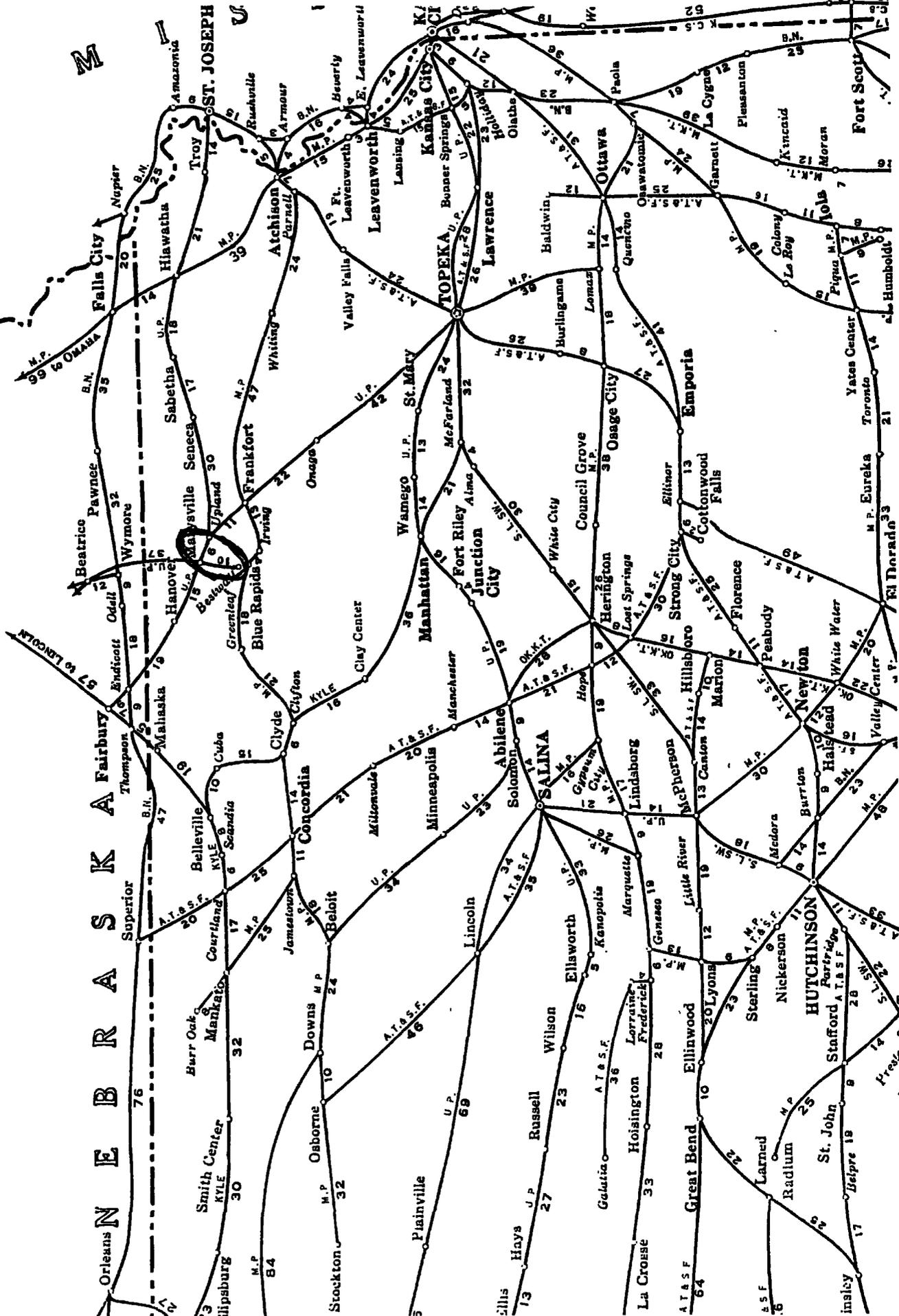
EXHIBIT 1

MAP OF RAIL LINES OF KOCH INDUSTRIES, INC.

BLUE RAPIDS RAILWAY

B 16 to St. Louis

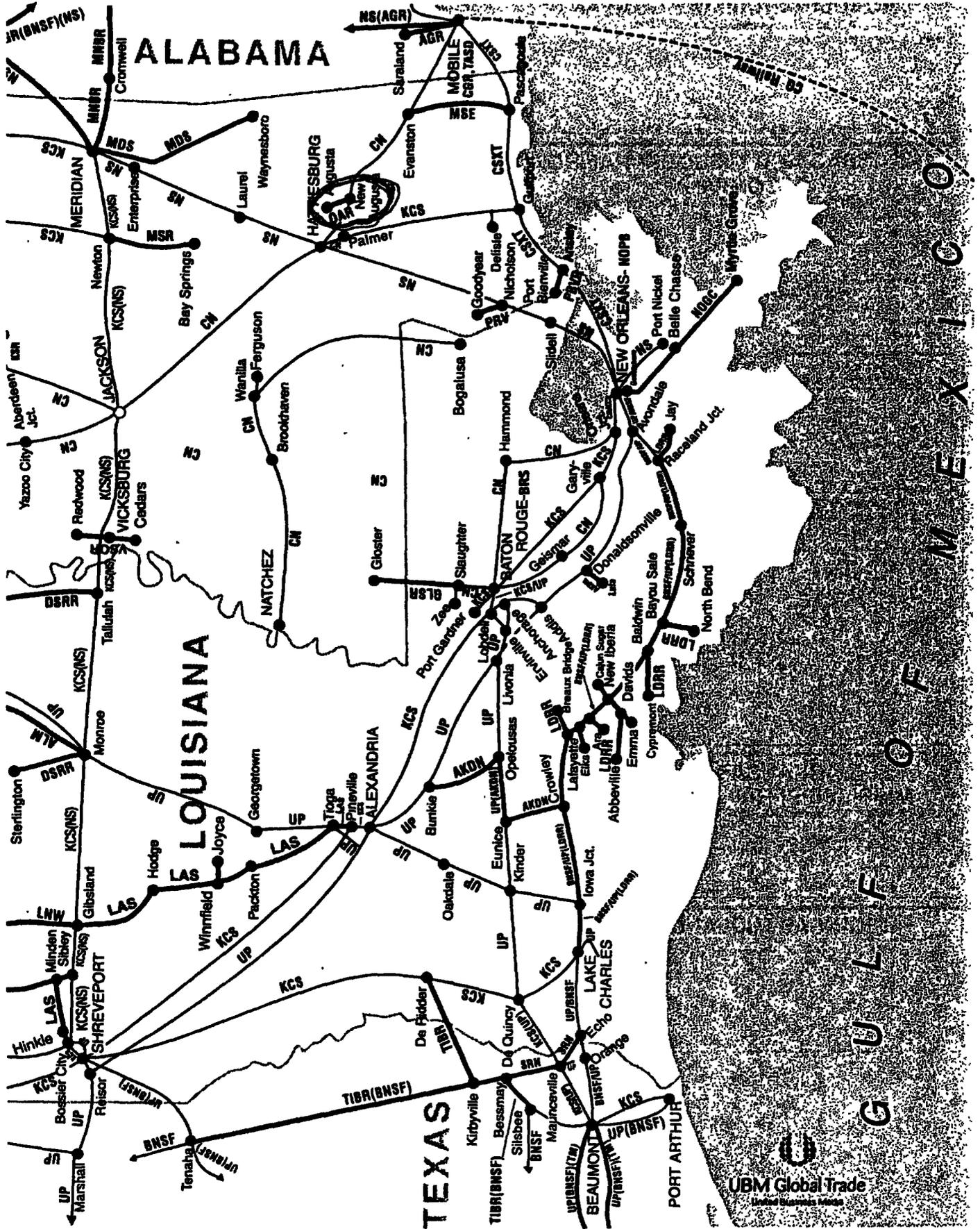
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KM RAILWAYS, LLC

REGION 12

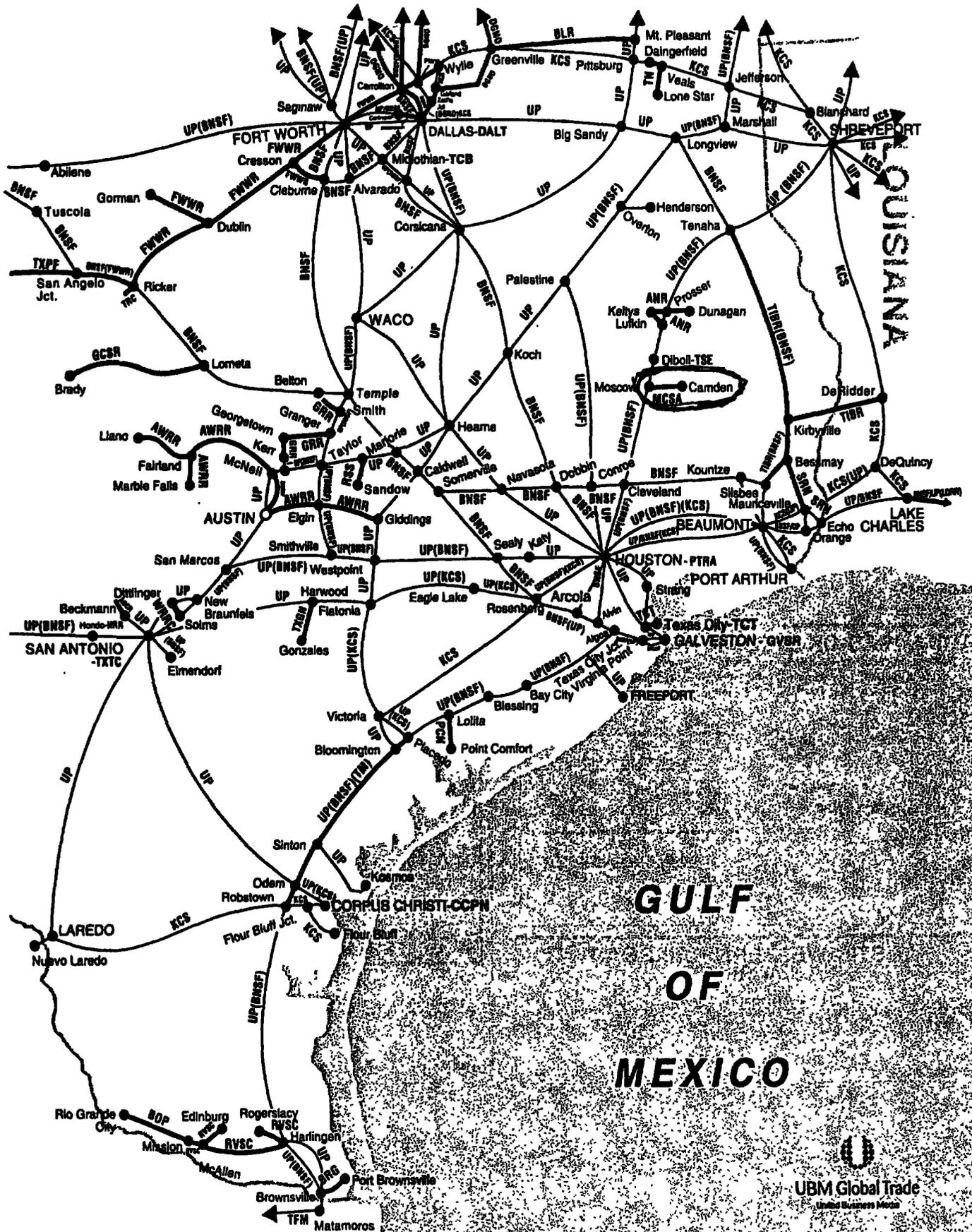
AR/LA/MS



MOSCOW, CAMDEN & SAN AUGUSTINE RAILROAD

REGION 20/21

OK/TX



GULF OF MEXICO



EXHIBIT 2

REDACTED PUBLIC VERSION OF AGREEMENT

(Unredacted Agreement filed under separate cover with

Motion for a Protective Order)

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (the "Agreement"), dated as of November 18, 2009 (the "Effective Date") is made and entered into by and among Old Augusta Railroad, LLC, a Delaware limited liability company ("Seller") and KM Railways, LLC, a Delaware limited liability company ("Buyer"; Buyer and Seller each a "Party" and collectively, the "Parties").

WHEREAS, Seller desires to sell and Buyer desires to buy all of the railroad track owned by Seller which constitutes the entire 2.5 mile line of rail operated by Seller in Perry County, Mississippi, which line runs between New Augusta, Mississippi (Station No. FSAC 10) and Augusta, Mississippi (Station No. FSAC 20) and which is used by Seller to transit railcars between the Leaf River Pulp Mill and Sawmill and the Canadian National Railroad interchange (the "Railroad Track"), including, the rails, ballast, ties and other components of such railroad track (the Railroad Track and such other assets, collectively, the "Assets");

NOW, THEREFORE, in consideration of the foregoing, and the representations, warranties, covenants, agreements and conditions contained herein, and intending to be legally bound, Seller and Buyer agree as follows:

ARTICLE I SALE AND PURCHASE OF ASSETS; ANCILLARY AGREEMENTS

1.1 Sale and Purchase of Seller Assets. Concurrently with the execution and delivery hereof, Seller is selling, transferring, assigning, conveying, setting over and delivering to Buyer, and Buyer is purchasing, acquiring and accepting from Seller all of the Assets.

1.2 Excluded Assets. The Parties expressly acknowledge and agree that, except as expressly set forth in Section 1.3 hereof, the sale and purchase of the Assets shall not include all or any portion of Seller's right, title and interest in and to the real property on which the Assets are located, the bridge structure that carries the Railroad Track over Leaf River (as opposed to the Railroad Track itself, which forms part of the Assets) or the fixtures attached to such real property (collectively, the "Excluded Assets"). For avoidance of doubt, the Parties acknowledge and agree that Assets shall not include any railroad track, including, rails, ballast, ties and other component of such railroad track, that is maintained by the Seller but owned by Leaf River Cellulose, LLC.

1.3 Property Rights. Notwithstanding anything in Section 1.2 to the contrary, at Closing, (a) Seller shall (i) grant to Buyer an easement and right of way over the portion of the Excluded Assets owned by Seller in fee simple, (ii) transfer to Buyer Seller's interest in any easement and right of way comprised in the Excluded Assets, and (iii) grant to Buyer a license over the portion of the Excluded Assets in which Seller owns a leasehold interest (each of the foregoing grants, transfers and licenses shall collectively be called the "Real Property Agreements"). The Real Property Agreements shall be in form and substance reasonably acceptable to Seller and Buyer.

ARTICLE II CLOSING AND PURCHASE PRICE

2.1 The Closing. The closing (the "Closing") of the transactions contemplated hereby shall take place on the date (the "Closing Date") that is the later of (i) thirty calendar days after the Effective Date and (ii) the date that is one business day after all conditions set forth in Article V hereof are satisfied (the "Closing Conditions"). Title to the Assets shall pass to Buyer as of 12:01 a.m. Wichita, Kansas time on the Closing Date (the "Closing Time"). Buyer shall assume risk of loss for the Assets as of the Closing Time. Time is of the essence of this Agreement. If all of the Closing Conditions shall have not been satisfied or waived in writing on or before December 30, 2009, the Party whose Closing Conditions have not been satisfied or waived shall be entitled to terminate this Agreement by written notice to the other Party given on or after December 31, 2009. At the Closing, Buyer and Seller shall deliver or cause to be delivered to each other the agreements required to be delivered by Section 5 hereof.

2.2 Consideration. In consideration of the sale and transfer of the Assets to Buyer and the other undertakings of Seller hereunder, Buyer shall pay the Purchase Price (as hereinafter defined) to Seller.

2.3 Purchase Price. [REDACTED]

2.4 Allocation of Purchase Price. Attached as Schedule 2.4 is an allocation of the Purchase Price among the Assets. Schedule 2.4 is intended to be consistent with the requirements of Section 1060 of the Code and regulations promulgated thereunder (the "Allocation Statement"). For purposes of this Agreement, "Code" means the Internal Revenue Code of 1986, as amended, and references to any section of the Code shall include any successor provision in the Code or any similar or successor statute. Buyer, Buyer's affiliates and Seller agree to file all Tax Returns (including filing Internal Revenue Service Form 8594) consistent with the Allocation Statement. None of Seller, Buyer or Buyer's affiliates shall take any position which is inconsistent with the Allocation Statement, except to the extent required by applicable law pursuant to a "determination" within the meaning of Section 1313(a) of the Code.

ARTICLE III ASSUMPTION OF LIABILITIES

Seller acknowledge and agree that Buyer is not assuming any liabilities of Seller pursuant hereto, and that all liabilities which arise out of or relate to the ownership and/or operation of the Assets prior to the Closing Date (collectively, the "Seller Liabilities") shall continue to be liabilities of Seller.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Seller. Seller hereby represents and warrants, as applicable, to Buyer as follows:

4.1.1 Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is duly

qualified to do business as a foreign limited liability company and is in good standing in all jurisdictions in which the ownership of the Assets makes such qualification necessary.

4.1.2 Authority to Conduct Business and to Own and Sell Assets. Seller has the requisite power and authority to own the Assets. Seller has the requisite power and authority to execute and deliver this Agreement and any other written agreements entered into between Buyer and Seller on the date hereof and to perform its obligations hereunder and thereunder, to consummate the transactions contemplated hereby and thereby, and to transfer the Assets in accordance with the terms and conditions hereof. The execution and delivery of this Agreement by Seller and any other written agreement entered into between Buyer and Seller on the date hereof and the performance by Seller of its obligations hereunder and thereunder and the consummation of the transactions provided for herein and therein have been duly and validly authorized by all necessary action on the part of Seller. This Agreement and any other written agreement entered into between Buyer and Seller on the date hereof have been duly executed and delivered by Seller and constitute the valid and binding agreements of Seller, enforceable against Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other Laws (as defined in Section 4.1.7) affecting the enforceability of creditors' rights generally, to general equitable principles and to the discretion of courts in granting equitable remedies.

4.1.3 No Consents. Except for those already obtained or that will have been obtained by closing, no material governmental consents, approvals, orders or authorizations, and no consent or approval of any other third party, are required for the execution and delivery of this Agreement by Seller, or for the consummation by Seller of the transactions contemplated hereby.

4.1.4 No Violation of Laws, Agreements; No Liens. The execution, delivery and performance by Seller of this Agreement and any other written agreement entered into between Buyer and Seller on the date hereof and the consummation by Seller of the transactions contemplated hereby and thereby: (a) are not prohibited by and do not violate any provision and will not result in the breach of or default under, with or without the passing of time or the giving of notice or both, or accelerate or permit the acceleration of the performance required by the terms of (i) any applicable law, rule, regulation, by-law, ordinance, judgment, decree, order or other requirement (collectively, "Laws") of (A) the United States or of (B) any State of the United States or of (C) any municipal or county government or of (D) any court, authority, department, commission, board, bureau, agency or instrumentality of either (A) or (B) or (C) (collectively, a "Governmental Entity"), (ii) any term or provision of the organizational documents of Seller, or (iii) any contract, indenture, agreement or commitment to which Seller is a party or is bound or any contract, indenture, agreement or commitment to which any of the Assets are subject, in each case in any material respect, and (b) have not resulted and will not result in the creation or imposition of any material lien, encroachment, easement, encumbrance, mortgage, hypothecation, equity, charge, restriction, possibility of reversion or other similar conflicting ownership or security interest (a "Lien") on any Asset.

4.1.5 Condition of Assets / Liens. Since December 31, 2008: (a) Seller has not mortgaged, pledged or otherwise subjected to any Lien any of the Assets except for Permitted Liens and Liens to be released on the Closing Date; (b) Seller has not canceled or

compromised any material claim or amended, modified, canceled, terminated, relinquished, waived or released any material contract or right to the extent related to the Assets; and (c) Seller has not agreed, committed or entered into any understanding to do anything set forth in this Section 4.1.5. For purposes of this Agreement, "Permitted Liens" means (a) Liens for taxes, assessments or other governmental charges or levies that are not yet due and payable, (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, workmen, repairmen and other Liens imposed by Law, and (c) easements, covenants, rights-of-way, restrictions and other similar charges or encumbrances not materially interfering with the operation of the Assets.

4.1.6 No Litigation. There is no material legal action, suit, claim filed, arbitration, or other proceeding or any investigation or inquiry pending or, to the knowledge of Seller, after due inquiry, threatened against, relating to or involving Seller (before any court, agency, arbitrator or otherwise) with respect to the Assets, and Seller is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it with respect to the Assets.

4.1.7 Compliance with Law. Seller has complied in all material respects and is in compliance in all material respects with and is not in violation of any statute, act, decree, rule, code, regulation, restriction, law, ordinance, permit, lease, decree, common law, approval, license requirement, directive, injunction, writ, award or decree of or issued by any Governmental Entity ("Law") or governmental rule or regulation to which any of the Assets is subject.

Without limiting the foregoing, as concerns all Laws relating to (i) pollution or protection of the environment (by way of example and not of limitation, this shall be deemed to include the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*), the Federal Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 5101 *et seq.*), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), and all relevant state and local counterparts), (ii) releases or threatened releases of, or exposure to, Hazardous Materials, including investigations, monitoring, remediation and abatement of such releases (by way of example and not of limitation, this shall be deemed to include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) and all relevant state and local counterparts), or (iii) the manufacture, handling, transport, use, treatment, storage, management or disposal of hazardous wastes and other Hazardous Materials (by way of example and not of limitation, this shall be deemed to include the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*) and all relevant state and local counterparts) (collectively, "Environmental Laws"), with respect to the Assets:

(a) Seller has complied in all material respects and is in compliance in all material respects with, and has not incurred any liability or potential liability under, all applicable Environmental Laws as they relate to the Assets;

(b) Seller has obtained and maintains in full force and effect all material permits and approvals required by applicable Environmental Laws;

(c) There are no outstanding claims, charges, actions, suits or demands pending, or to Seller's knowledge threatened, that arise under, or allege any violation of, any applicable Environmental Laws;

(d) There are no outstanding or pending orders, decrees, notices alleging violations or noncompliance, or penalty assessments issued by any Governmental Entity under any applicable Environmental Laws;

(e) There has been no spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Materials into air, soil, groundwater or surface water (a "Release") from any of the Assets, or at, on, or under, the Excluded Assets, by Seller, or to Seller's knowledge by any other person, except as is permitted under Environmental Law.

For purposes of this Agreement, the term "Hazardous Materials" means any (i) petroleum or petroleum products or fractions of petroleum, (ii) radioactive materials, (iii) asbestos in any form that is or could become friable, (iv) urea formaldehyde foam insulation, (v) transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs), and (vi) any other chemicals, materials or substances which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "extremely hazardous substances," "regulated substances," "restricted hazardous wastes," "toxic substances" or "toxic pollutants" or other similar terms under, or are regulated under any Environmental Law.

4.1.8 Title to Assets; Related Matters. Seller has, and on the Closing Date will convey to Buyer, good and marketable title to all the Assets, free and clear of all Liens, other than Permitted Liens and Liens that will be released on the Closing Date. Except for reasonable wear and tear incurred in the ordinary course of business, the Assets have been maintained in accordance with good industry practice and are in a state of good working order and repair.

4.1.9 Tax Returns; Taxes.

(a) All Taxes required to be paid with respect to the Assets have been paid in full, and there are no liens for Taxes (other than Permitted Liens) with respect to any of the Assets. For purposes of this Agreement, "Taxes" shall mean (i) any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, withholding, custom, duty or other tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any taxing authority, (ii) any liability for the payment of any amounts of any of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability of a person for payment of such amounts was determined or taken into account with reference to the liability of any other person, and (iii) any liability for the payment of any amounts as a result of being a party to any tax sharing agreements or with respect to the payment of any amounts of any of the foregoing types as a result of any express or implied obligation to indemnify any other person.

4.1.10 Brokers and Finders. Neither Seller nor any affiliate of Seller, nor any of their respective partners, members, shareholders, directors, officers or employees has employed or retained anyone acting as broker, finder, financial advisor or in any similar capacity or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with this Agreement or any of the transactions contemplated hereby for which Buyer has any liability.

4.1.11 Tenancies; Third Party Rights. Seller has granted no leases or tenancies for any portion of the Assets, and no third party has any rights to purchase, use or possess any part or all of the Assets or any right of first refusal, right of first offer, option or similar preferential right to purchase, lease, use or possess such Assets.

4.1.12 **NO OTHER REPRESENTATIONS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, THE SALE OF THE ASSETS IS MADE ON AN "AS IS, WHERE IS" BASIS, AND SELLER SHALL NOT BE DEEMED TO HAVE MADE ANY FURTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, QUALITY OR WORKMANSHIP, FITNESS FOR USE OR A PARTICULAR PURPOSE, MAINTENANCE OR MARKETABILITY OF ANY OF THE ASSETS.**

4.2 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

4.2.1 Organization of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware with all requisite power and authority to own or hold the Assets it will acquire pursuant to the transactions contemplated by this Agreement, and to execute, deliver and perform this Agreement and other documents to be executed by Buyer in connection with this transaction.

4.2.2 Authority to Execute, Deliver and Perform this Agreement. Buyer has all necessary power and authority to execute, deliver and perform this Agreement. All proceedings and action by Buyer required to authorize the legal and valid execution, delivery and performance of this Agreement and other documents related to this transaction and its consummation have been duly taken by Buyer. This Agreement has been duly authorized, executed and delivered by, and is the valid and binding obligation of, Buyer.

4.2.3 No Violation of Laws, Agreements. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby are not prohibited by, and do not violate any provision and will not result in the breach of or default under, with or without the passing of time or the giving of notice or both, or accelerate or permit the acceleration of the performance required by the terms of (a) any applicable Law of any Governmental Entity, (b) the organization documents of Buyer or (c) any material contract, indenture, agreement or commitment to which Buyer is a party or bound or any contract, indenture, agreement or commitment to which any of Buyer's properties are subject.

4.2.4 No Litigation. There is no legal action, suit, claim filed, arbitration, or other proceeding or any investigation or inquiry pending or, to the knowledge of Buyer, after due inquiry, threatened against, relating to or involving the Assets.

4.2.5 Financing. Buyer has adequate funds sufficient to enable Buyer to pay the Purchase Price at Closing.

4.2.6 Brokers and Finders. Neither Buyer nor any affiliate of Buyer, nor any of their respective partners, members, shareholders, directors, officers or employees has employed or retained anyone acting as broker, finder, financial advisor or in any similar capacity or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with this Agreement or any of the transactions contemplated hereby for which Seller has any liability.

ARTICLE V CLOSING CONDITION; COVENANTS

5.1 Buyer Conditions. The obligation of Buyer to close on the purchase of the Assets is subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived (but only in writing) by Buyer:

5.1.1 Seller shall have delivered to Buyer the following:

- (a) certified resolutions of the Board of Directors or a certified consent of the Managing Member, as applicable, of Seller authorizing Seller to enter into this Agreement and to consummate the transactions contemplated hereunder;
- (b) duly executed conveyance documents including a bill of sale and such other good and sufficient instruments of transfer conveying and transferring to Buyer all of the Assets, in each case in form satisfactory to Buyer;
- (c) evidence that all Liens on the Assets (other than Permitted Liens) have been released;
- (d) the Real Property Agreements, duly executed and, if required, acknowledged by Seller;
- (e) a copy of the consent of CN Railroad to the license described in Section 1.3(c) hereof;
- (f) a duly executed side letter granting Seller a right of first refusal on any sale of the Assets and a call right on the Assets, for fair market value, if the Leaf River Mill is sold or transferred (the "Side Letter")
- (g) a duly executed track lease agreement as mutually agreed to by the Parties;
- (h) such other documents as Buyer may reasonably request.

5.1.2 All of the representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date).

5.1.3 There shall not be in effect any Laws that enjoins, prohibits, makes illegal or materially restricts or otherwise prevents the consummation of the purchase contemplated hereby.

5.1.4 All material governmental consents, approvals, orders or authorizations, required for the execution and delivery of this Agreement by Seller, or for the consummation by Seller of the transactions contemplated hereby shall have been obtained.

5.2 Seller Conditions. The obligation of Seller to close on the sale of the Assets is subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any one or more of which may be waived (but only in writing) by Seller:

5.2.1 Buyer shall have delivered to Seller the following:

(a) certified resolutions of the Board of Directors or a certified consent of the Managing Member, as applicable, of Buyer authorizing Buyer to enter into this Agreement and to consummate the transactions contemplated hereunder;

(b) the Purchase Price;

(c) evidence that The Surface Transportation Board exemptions issued pursuant to Section 10502 of the Interstate Commerce Act, 49 U.S.C. § 10502 and the rules of the Surface Transportation Board, required for the purchase of the Rail Line by Buyer and for the control by Koch Industries, Inc. of Buyer upon Buyer acquiring the Rail Line shall have become effective;

(d) all Real Property Agreements to which Buyer is a signatory, duly executed and, if required, acknowledged by Buyer;

(e) a duly executed track lease agreement as mutually agreed to by the Parties;

(f) the duly executed Side Letter; and

(g) such other documents as Seller may reasonably request.

5.2.2 All of the representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date).

5.2.3 There shall not be in effect any Laws that enjoins, prohibits, makes illegal or materially restricts or otherwise prevents the consummation of the sale contemplated hereby.

5.2.4 Illinois Central Railroad Company shall have consented in writing to the license described in Section 1.3(c) hereof.

5.3 Covenants. Between the Effective Date and the Closing Date, Seller shall (a) comply in all material respects with all applicable Laws in connection with the Assets, (b) use its commercially reasonable efforts to maintain, preserve and keep the Assets in good condition and repair, normal wear and tear excepted, (c) not sell, transfer, mortgage, encumber, lease or otherwise dispose of any of the Assets, and (d) pay all taxes and assessments as and when due with respect to the Assets. The risk of loss with respect to the Assets shall remain with Sellers until the Closing. In the event that, prior to the Closing, any Asset is damaged or destroyed or all or any portion of the real property subject to the Real Property Agreements is taken pursuant to the power of eminent domain, then:

- (i) Buyer may terminate this Agreement by written notice to Seller; or
- (ii) Buyer may proceed to Closing, but may require Seller to assign to Buyer the proceeds of any insurance payable as a result of the occurrence of such loss, damage, or destruction.

ARTICLE VI INDEMNIFICATION

6.1 Survival Period. (a) All representations and warranties made by the Parties in this Agreement and all claims for breaches of such representations and warranties shall survive the Closing Date for a period of twelve (12) months following the Closing Date except for breaches of representations and warranties set forth in:

(i) Sections 4.1.1, 4.1.2, 4.1.10, 4.2.1, 4.2.2 and 4.2.6, and the first sentence of Section 4.1.8, which shall survive the Closing indefinitely; and

(ii) Section 4.1.9, which shall survive the Closing for six (6) months after the expiration of the applicable tax statute of limitations.

(b) No claim for a breach of a representation or warranty may be made, brought or maintained by any Party hereto after the expiration of the applicable survival period set forth in this Agreement unless such claim has been asserted by proper written notice under this Article VI, specifying the details known as of such date of the alleged misrepresentation or breach of representation or warranty, on or prior to the expiration of the applicable survival period. If such written notice of a claim has been given in accordance with this Agreement prior to the expiration of the applicable survival period for such representation or warranty, then the applicable representation or warranty shall survive as to such claim until such claim has been finally resolved.

6.2 Indemnification by Seller. Subject to the provisions of this Article VI, from and after the Closing Date, Seller shall indemnify, defend, save and hold harmless Buyer, its affiliates, parent companies, subsidiaries, officers, directors, members, employees and agents (collectively, the "Buyer Indemnified Parties") from and against all Losses (as hereinafter defined), demands, claims, liabilities, or causes of action incurred by or asserted against any

Buyer Indemnified Party in connection with (a) any breach of the representations and warranties made by Seller in this Agreement, (b) any breach of any of the covenants or agreements made by Seller in this Agreement, (c) any Seller Liability, (d) any liability, claim, or obligation relating to the Excluded Assets (including, but not limited to, any claim relating to any Release at, on, under, or associated with the Excluded Assets) or (e) any claim arising out of the use, sale or the operation of the Assets on or prior to the Closing Date or (f) any failure of Seller to comply with applicable bulk sales laws (in consideration of such indemnification obligation, Buyer hereby waives compliance by Seller with any applicable bulk sales laws). For purposes of this Agreement, the term "Losses" means any losses, liabilities, damages, penalties, interest, costs and expenses (including reasonable attorneys' fees, and the costs of investigation and remediation of Releases) actually incurred in connection with any action, suit, demand, assessment, judgments and settlement, in any such case reduced by the amount of insurance proceeds recovered from any person with respect thereto.

6.2.1 Without limiting the foregoing, Seller shall indemnify, defend, save and hold harmless Buyer and Buyer Indemnified Parties from and against all Losses arising from (i) any Release occurring from, at, on or under the Assets prior to the Closing, and (ii) any Release occurring as a result of the transportation, treatment, storage, recycling or disposal of wastes and other Hazardous Materials originating by or from railcars or locomotives on the Assets prior to the Closing. Seller's obligation in this Section 6.2.1 shall survive the Closing and shall remain in effect until six (6) months after the expiration of any applicable statute of limitations.

6.3 Indemnification by Buyer. Subject to the provisions of this Article VI, from and after the Closing Date, Buyer shall indemnify, defend, save and hold harmless each Seller, such Seller's parent, shareholders, subsidiaries, officers, directors, employees and agents (collectively, the "Seller Indemnified Parties") from and against any and all Losses, demands, claims, liabilities or causes of action incurred by or asserted against any Seller Indemnified Party in connection with (a) any breach of the representations and warranties made by Buyer in this Agreement, or (b) any breach of any of the covenants or agreements made by Buyer in this Agreement, or (c) any claim arising out of the use, sale or the operation of the Assets after the Closing Date other than by Seller.

6.4 Procedures for Claims. If a Buyer Indemnified Party or Seller Indemnified Party (an "Indemnified Party") believes that it has suffered or incurred any Losses for which it is entitled to indemnification under this Article VI, the Indemnified Party shall as soon as practicable (and in any event within sixty (60) business days) notify in writing the Party against whom indemnification is sought (the "Indemnifying Party") to such effect and the Indemnifying Party shall have the right to assume, at its full cost and expense, the control of the legal proceeding (including the selection of counsel); provided, however, that failure to give such notice shall not affect the indemnification provided hereunder except to the extent that the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure.

6.5 Exclusive Remedy. From and after the Closing, the Parties hereby agree that, except for any claims based on fraud, the indemnification provided in this Article VI shall be

the exclusive post-Closing remedy available to any Party hereto for any breach or inaccuracy of any representation, warranty or covenant contained herein.

6.6 WAIVER. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR CLAIMS BASED ON FRAUD, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST REVENUES OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT UNLESS SUCH PARTY IS THE INDEMNIFYING PARTY HEREUNDER AND SUCH DAMAGES ARE PAYABLE BY AN INDEMNIFIED PARTY PURSUANT TO A THIRD PARTY CLAIM.

6.7 Treatment of Payments. Any payments made pursuant to this Article VI shall be treated by the Parties as an adjustment to the applicable Purchase Price.

ARTICLE VII TAXES AND EXPENSES

7.1 General Taxes. All federal, state and municipal income, state and local real estate and personal property, manufacturer's excise, federal and state withholding, federal and state employment and unemployment taxes, license fees and other charges levied or imposed upon or in connection with the Assets or the business conducted by Seller or the operation thereof for the period on or before the Closing Date, shall be borne and paid by Seller, subject to the right to contest the same in appropriate proceedings, and all such taxes, fees and charges so levied or imposed upon or in connection with the Assets for the period after the Closing Date, shall be borne and paid by Buyer.

7.2 Transfer Taxes and Expenses. All taxes, fees and other governmental charges (including, without limitation, charges for or in connection with the recording of any instrument or document) payable in connection with the transfer of the Assets or granting of interests in the Excluded Assets, as contemplated by this Agreement, shall be payable by Buyer.

7.3 Expenses. Except as otherwise provided in this Article VII, each Party shall bear and pay its own expenses and taxes incurred in connection with the transactions referred to in this Agreement.

ARTICLE VIII MISCELLANEOUS

8.1 Schedules and Exhibits. The Schedules and Exhibits hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

8.2 Further Assurances. From and after the Closing, a Party shall from time to time, at the other Party's request, execute and deliver to the requesting Party, such other instruments of conveyance and transfer (including without limitation, additional assignments suitable for recording) and take such other action as the requesting Party may reasonably request so as more

effectively to sell, transfer, assign and deliver and vest in Buyer, title to and possession of the Assets as provided in this Agreement, to establish any exemptions (including by timely completing and filing any applicable exemption forms) of the type described in Section 7.2 above, or otherwise to consummate the transactions contemplated by this Agreement.

8.3 Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered personally, by facsimile transmission, by nationally recognized overnight courier (with evidence of delivery and postage and other fees prepaid) or by registered or certified first class mail, return receipt requested, postage prepaid, and in each case addressed:

If to Seller, to:

Old Augusta Railroad, LLC
c/o Georgia-Pacific LLC
133 Peachtree St., N.E.
Atlanta, GA 30303
Attention: General Counsel
Facsimile: (404) 584-1461

If to Buyer, to:

KM Steel Industry Fuel, LLC
4111 East 37th Street
Wichita, KS 67204
Attention: President
Facsimile: (316) 828-7946

provided, however, that if either addressee shall have designated a different address by such notice to the other addressee, then to the last address so designated.

8.4 Assignment. No assignment or transfer by any Party of such Party's rights and obligations hereunder shall be made without the prior written consent of the other Party. This Agreement and the rights and duties hereunder shall be binding upon and inure to the benefit of the successors and permitted assigns of each of the Parties hereto.

8.5 Complete Agreement. Except as set forth in any contemporaneous written instruments signed by each of the Parties hereto, this Agreement, the Exhibits and Schedules hereto set forth the entire understanding of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any Party with respect to the subject matter hereof.

8.6 Governing Law and Venue. This Agreement and all matters arising hereunder or in connection herewith, whether arising in tort, contract or otherwise, shall be governed by

and construed and enforced in accordance with the internal laws of the State of Delaware without giving effect to the principles of conflicts of laws thereof. Any action or proceeding between or among the Parties relating to this Agreement shall be commenced and maintained exclusively in the state or federal courts of Wilmington, Delaware, and each Party submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. **THE PARTIES WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.**

8.7 **No Third-Party Beneficiaries.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the Parties hereto, any rights or remedies under or by reason of this Agreement. The rights, duties and obligations under this Agreement are for the sole benefit of the Parties and their respective successors and permitted assigns, and are for the benefit of no other person.

8.8 **Amendment; Waivers.** No amendment, modification, waiver, replacement, termination or cancellation of any provision of this Agreement will be valid, unless the same is in writing and signed by the Parties hereto. Each waiver of a right hereunder does not extend beyond the specific event or circumstance giving rise to the right. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any Party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor does any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.

8.9 **Severability.** Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Law, each Party hereby waives any provision of Law that renders any such provision prohibited or unenforceable in any respect. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

8.10 **Headings.** The headings of the Articles and Sections of this Agreement and of the Exhibits and Schedules to this Agreement are inserted for convenience of reference only and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

8.11 Counterparts. More than one counterpart of this Agreement may be executed by the Parties hereto, and each executed counterpart shall be deemed an original.

8.12 Publicity. Any public announcements or other publicity with respect hereto or the transactions contemplated hereby shall be made only at such time and in such manner as Seller and Buyer shall mutually agree, except that either Party shall be free to make such public announcements as it shall deem reasonably necessary, after full consultation with the other Party, to comply with federal or state securities or other applicable laws.

WITNESS the due execution of this Asset Purchase Agreement as of the day and year first above written.

SELLER:

OLD AUGUSTA RAILROAD, LLC

By: Patrich J. Boushka
Pat Boushka
President

BUYER:

KM RAILWAYS, LLC

By: _____
Daniel J. Murray
President

REDACTED

WITNESS the due execution of this Asset Purchase Agreement as of the day and year first above written.

SELLER:

OLD AUGUSTA RAILROAD, LLC

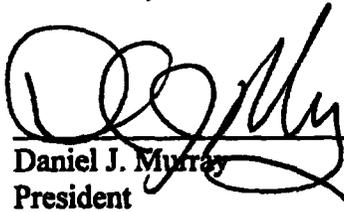
By: _____

Pat Boushka
President

BUYER:

KM RAILWAYS, LLC

By: _____


Daniel J. Murray
President