AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made and entered into as of this ___ day of _W__y__, 2021, by and between CARBON COUNTY, PENNSYLVANIA, a county government established under Pennsylvania law, (herein referred to as "Carbon County" or "Seller"), and the READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY, a Pennsylvania corporation (hereinafter referred to as "Purchaser") (together, with the Seller, collectively referred to as the "Parties").

WHEREAS, pursuant to the terms and subject to the conditions set forth in this Agreement, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, Seller’s right, title, and interest in and to the rail line, right of way, trackage and related real property described in this Agreement;

WHEREAS, Seller and the Carbon County Railroad Commission (an entity distinct from Seller and having no ownership in subject trackage and related real property) have leased the Property (as defined in Section 1.1, below) to the C. & S. Railroad Corporation ("C&S"), a Pennsylvania corporation that has been affiliated with Purchaser since 2003, pursuant to an Agreement for Lease of Property and Provision of Railroad Freight Service dated July 2, 1990, as amended ("Lease Agreement");

WHEREAS, Purchaser obtained trackage rights on the Property from C&S pursuant to an Amended & Restated Trackage Rights Agreement dated June 7, 1999 ("Trackage Rights Agreement") and together with C&S has operated common carrier freight rail service over the Property since entering into the Trackage Rights Agreement;

WHEREAS, Purchaser also operates a passenger rail excursion service under the Trackage Rights Agreement, and has not entered into any separate agreement with Carbon County or the Carbon County Railroad Commission governing the use of the railroad trackage for excursion services; and,

WHEREAS, Seller has agreed to sell the Property to Purchaser, and Purchaser has agreed to purchase the Property from Seller, in accordance with representations, warranties, covenants and/or agreements set forth herein.

WITNESSETH, THAT:

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

SECTION 1. DEFINITIONS AND EXHIBITS.

1.1. Definitions. For purposes of this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the meaning ascribed to it as follows:

Agreement. This Agreement for Purchase and Sale of Property.
Agreement Improvements-Conveyed. All improvements, fixtures, structures, buildings, facilities and other improvements of any and every nature located on the Land and all fixtures attached or affixed, actually or constructively, to the Land or to any such improvements, fixtures, structures, buildings, facilities or other improvements, and which are not contained within the Exhibit A - Exclusions & Reservations. Agreement Improvements-Conveyed includes, without limitation, signals, rails, bridges, embankments, retaining walls, tunnels, culverts, trestles, grade crossing materials, warning devices, ballast, subgrade, buildings, facilities, communication and signal systems and facilities, wires, pipes, poles, signs, fences, gates and all other railroad appurtenances on the Property.

Carbon County Parking Lot shall refer to the parking lot located at 1 Susquehanna Street, Jim Thorpe, PA 18229, adjacent to the rail station in Jim Thorpe, Pennsylvania.

Closing. The closing and consummation of the transactions contemplated hereby.

Closing Date. The date on which the Closing occurs.

Closing Documents. This term is defined in Section 9.2 below.

Conditions. All of the conditions to either party's obligations hereunder described or referred to in Section 10 hereof.

Effective Date. The date of actual receipt in the case of a notice which is hand delivered or sent by overnight courier service, or the date of receipt or rejection as evidenced by the return receipt if sent by registered or certified mail.


Environmental Liabilities. Any liability, cost, expense, penalty, or obligations of any kind arising under Environmental Laws, whether accrued or unaccrued, known or unknown, or arising before or after Closing.

Execution Date. The date that the last party executes this Agreement as shown next to the signatures for Seller and Purchaser below.
Exhibit A - Exclusions & Reservations. That real or personal property which is described in Exhibit A (Quitclaim Deed) as being excluded or otherwise reserved from the sale and conveyance covered by this Agreement, including any portion of the rail station located in Jim Thorpe, Pennsylvania, Josiah White Park, and the Carbon County Parking Lot adjacent to the rail station in Jim Thorpe as specifically excluded and reserved from the legal description of the property to be sold and conveyed to the Purchaser.

Exhibit A - Covenants. Any covenant or easement described in Exhibit A (Quitclaim Deed) which will be included in the Quitclaim Deed (as hereinafter defined) and which will run with the Land, including but not limited to any recorded or unrecorded municipal easements listed on Exhibit A.

Land. All those tracts, strips or parcels of land in Carbon County, Pennsylvania and Schuylkill County, Pennsylvania which are described in Exhibit A (Quitclaim Deed) as the property to be sold and conveyed to the Purchaser, with said Exhibit A being attached hereto and made a part of this Agreement. Land shall not include any portion of the rail station located in Jim Thorpe, Pennsylvania; Josiah White Park; or the Carbon County Parking Lot adjacent to the rail station.

Lease Agreement. The agreement entered into by C&S, Carbon County and the Carbon County Railroad Commission for the lease of rail properties dated July 2, 1990, as amended.

Property. The Land and the Agreement Improvements-Conveyed (but not the Exhibit A - Exclusions & Reservations), together with all rights, privileges, members, licenses and easements appurtenant to the Land now or hereafter existing, as described and/or depicted on or in Exhibit A (Quitclaim Deed).

Purchase Consideration. The total consideration that will be provided to the Seller for the Property by the Purchaser as described in Section 3.1.

Purchase Price. The purchase price for the Property that will be paid in cash at or subsequent to Closing by the Purchaser to the Seller as described in Section 3.1.

Regulated Substances. Any substance which is controlled, regulated, prohibited, or subject to remediation requirements under any Environmental Laws.

Seller's Indemnified Parties shall mean Carbon County, the Carbon County Railroad Commission, and all officers, commissioners, members, employees, agents, representatives and contractors of Carbon County and the Carbon County Railroad Commission.

STB. The United States Surface Transportation Board.

Survey. This term is defined in Section 6.1 below.
1.2. **Exhibits and Schedules.** Attached hereto and forming an integral part of this Agreement are Exhibits A through E, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.

**SECTION 2. PURCHASE AND SALE.**

Subject to and in accordance with the terms and provisions hereof, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase, all of the rights, title and interests of Seller in and to the Property.

**SECTION 3. PURCHASE CONSIDERATION.**

3.1. **Purchase Price.**

3.1.1 The total purchase price for the Property that will be paid by Purchaser to Seller in cash shall be three million dollars ($3,000,000.00) (USA) (the "Purchase Price"). All cash payments by Purchaser hereunder shall be made by wire transfer of immediately available funds on the due date to an account designated by Seller at or prior to Closing.

3.1.2 Purchaser shall pay two million dollars ($2,000,000) to Seller at Closing.

3.1.3 Purchaser shall pay one hundred twenty-five thousand dollars ($125,000) to Seller once per year for eight years following the Closing Date. These Payments shall begin on the first anniversary of the Closing Date and shall be made on the anniversary of the Closing Date each year thereafter. This obligation shall be evidenced by a Promissory Note in the form of Exhibit B attached here, which Promissory Note shall be delivered by Purchaser at Closing.

3.2. **Lease Payments.** Purchaser shall pay to Carbon County or its designee the Carbon County Railroad Commission all outstanding lease payments that are due and payable pursuant to the Lease Agreement, as defined above, for 2020 and for the applicable pro rata portion of 2021 or any other applicable periods at Closing.

3.3. **In-Kind Investments.** Following the Closing Date and within the period of time specified below, Purchaser shall complete the following in-kind investments as part of the Purchase Consideration for the Property:

3.3.1 Purchaser shall invest at least seven hundred thousand dollars ($700,000) in two (2) rail crossings in the city of Jim Thorpe, Pennsylvania. Purchaser is obligated to complete these improvements at its sole cost and expense. The investment amount of $700,000 is a minimum investment and not a cap on Purchaser’s obligations.
a. One crossing shall replace the existing crossing into the Carbon Parking Lot. The crossing shall be located in the same general location as the existing crossing. The crossing shall include active warning and control devices for vehicles and pedestrians. The crossing shall conform to the representative drawing attached as Exhibit C and shall be completed within twelve (12) months of the Closing Date.

b. One crossing shall be a new private pedestrian crossing between the trail bridge and the Carbon County Parking Lot. The crossing shall conform to the representative drawing attached as Exhibit D and shall be completed within thirty-six (36) months of the Closing Date.

3.3.2 Purchaser shall invest at least one million dollars ($1,000,000) in improvements to the railroad track and related track materials on the Property (the “Rail Line”). Such improvements must be made within the eight (8) year period of the installment payments discussed above in Section 3.1.3. Purchaser shall provide Seller with an annual report on the status of such investment commitment and shall consult with the Seller about the nature of the improvements that Purchaser plans to make to the Rail Line on each anniversary of the Closing Date during such 8-year period (until such time as the improvements are completed).

3.3.3 Real Estate Taxes. All real estate taxes applicable to the Property, if any, shall be prorated, as of Closing, using the then-current fiscal or calendar year, as may be applicable by each taxing authority.

3.3.4 Other Prorations. Seller and Purchaser acknowledge that it may not be possible to effect a final reconciliation of all income and expense items that are to be adjusted until after Closing. The parties agree to cooperate in good faith in effecting such final reconciliation and each party shall promptly pay (or reimburse the other party for) any expense item that is chargeable to that party and shall promptly remit any income to the other item to the other party. The provisions of this subsection shall survive the Closing.

3.3.5 Nesquehoning Borough Authority Easement. Prior to Closing, Purchaser and Seller shall work together in good faith to establish recorded easement rights on, over, across or through the Property to the Nesquehoning Borough and/or the Nesquehoning Borough Authority (collectively, “Nesquehoning”) for nominal consideration in order to enable Nesquehoning to exercise its existing rights under License Agreement No. 05-0313 and License Agreement No. 05-0314 between C&S and the Nesquehoning Borough Authority (which existing License Agreements would be terminated in connection with the grant of such easement rights).
and any other reasonable and necessary property rights that Nesquehoning may need in order to maintain its existing public utility infrastructure.

SECTION 4. TITLE TO THE PROPERTY.

4.1. **Form of Conveyance.** At Closing, Seller shall transfer all of its right, title and interest in and to the Property to Purchaser by quitclaim deed in the form attached to this Agreement as Exhibit A (the “Quitclaim Deed”). The transfer of the Property shall be made on an “as-is, where-is” basis without representation or warranty of any kind except as set forth in this Agreement and specifically subject to the following:

4.1.1 General real estate taxes for the year of Closing and subsequent years not yet due and payable;

4.1.2 Existing laws, orders and regulations, including applicable zoning laws and regulations;

4.1.3 Except as is otherwise provided in this Agreement, all tenancies, encumbrances, easements, rights, conditions, reservations, leases, licenses, permits, privileges, agreements, third party agreements, covenants, conditions, restrictions, reservations, rights of re-entry and possibilities of reverter, whether or not of record or as may be apparent by an inspection or survey of the Property and affect the Property as of the Execution Date or the Closing Date but excluding the Lease Agreement which shall terminate as of the Closing Date;

4.1.4 Whatever rights the public may have to the use of any roads, alleys, bridge or streets on or crossing the Property;

4.1.5 Streams, rivers, creeks and waterways passing under, across or through the Property;

4.1.6 All exclusions, reservations and covenants described in this Agreement, including specifically the Exhibit A - Exclusions & Reservations and the Exhibit A - Covenants; and

4.1.7 Any pipes, wires, poles, cables, culverts, drainage courses or systems, or other facilities on or crossing the Property, together with the rights (if any) of persons entitled to maintain, repair, renew, replace, use or remove the same as defined and described in Exhibit A.

4.2. The Quitclaim Deed shall contain the following clause: "THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO
HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE IN OR ON SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT."

SECTION 5. POST-CLOSING COVENANTS.

Following Closing, the parties agree to the following:

5.1. Properties Retained by Carbon County. The Parties acknowledge that Seller shall retain title to and ownership of the rail station located in Jim Thorpe, Pennsylvania; Josiah White Park; and the Carbon County Parking Lot adjacent to the rail station in Jim Thorpe.

5.2. Space Rental at Rail Station in Jim Thorpe, PA. Purchaser shall continue to rent space at the rail station in Jim Thorpe, Pennsylvania from Seller pursuant to the lease agreement originally entered into as of August 19, 1986 by Carbon County and Panther Valley Railroad Corporation.

5.3. Passenger Rail Excursions. Purchaser must continue to offer passenger excursion train services in the vicinity of Jim Thorpe, Pennsylvania for a period of ten (10) years from the Closing Date, with the rail station in Jim Thorpe, Pennsylvania being the principal point of origin for such passenger excursion service during that period. Purchaser shall use its best efforts to maintain or exceed the level of excursion train service that it historically has provided during this ten-year period.

5.4. Parking Spaces. Six (6) parking lot spaces in the Carbon County Parking Lot shall be reserved for use by Purchaser. Any rights of Purchaser relating to such parking spaces shall terminate if Purchaser ceases regular passenger excursion train services originating in Jim Thorpe, Pennsylvania.

5.5. Metering of Water at Jim Thorpe, PA Station. The water used by Purchaser at the rail station in Jim Thorpe, Pennsylvania shall be metered and Purchaser shall reimburse Seller for the cost of water used by Purchaser on a monthly basis within thirty (30) days following Purchaser's receipt of a statement from Seller setting forth such costs for the prior month.

5.6. Sidewalk Improvements. Purchaser shall cooperate in good faith with Seller and the Pennsylvania Department of Transportation ("PennDOT") to facilitate the completion of safety improvements to the
sidewalk on Route 209, including by allowing PennDOT and its contractors
to have such access to the Purchaser’s property as may be reasonably
necessary to complete such improvements.

5.7. Cooperation with Respect to Public Infrastructure. Purchaser shall cooperate in good faith with Seller and any other relevant
government entities (including but not limited to political subdivisions such
as Nesquehoning, Jim Thorpe Borough or the Pennsylvania Department
of Transportation) in connection with any future requests to access, cross
or otherwise use the Property in connection with existing or future public
infrastructure projects (including the maintenance of existing public
infrastructure that may be adjacent to, cross or otherwise encumber the
Property).

5.8. Notification About Abandonment or Discontinuance. In the
event that the Purchaser determines after Closing that it will file for STB
abandonment or discontinuance authority with respect to its common
carrier rights and obligations over all or any portion of the Property,
Purchaser shall provide advance notice of any such abandonment or
discontinuance filing to the Seller.

5.9. Survival. The foregoing post-closing covenants shall survive
the Closing of the Property conveyance contemplated by this Agreement.

SECTION 6. SURVEY.

6.1. Survey. Seller has conducted a survey of a portion of the Land,
Property, and Rail Line located in the Borough of Jim Thorpe, and provided
a copy to Purchaser, which survey is attached to Exhibit A (Quitclaim
Deed).

6.2. Subdivision. In the event the conveyance contemplated
hereunder shall constitute a subdivision, and if as a prerequisite to the
recording of the Quitclaim Deed it shall become necessary to comply with
applicable subdivision ordinances and regulations, Purchaser agrees that
it will, with reasonable diligence, arrange and pay for the preparation and
filing of any necessary subdivision plan with the appropriate authorities.
Purchaser will assume the entire cost of whatever streets, sewers and
utilities may be required in connection with such subdivision, and will do all
other acts and file such other papers as may be necessary to obtain any
and all required approvals thereof. Seller agrees to provide reasonable
cooperation and to execute such reasonable documents and subdivision
plan as are reasonably necessary to accomplish such subdivision. All
costs, expenses and attorneys’ fees incurred in complying with any such
subdivision ordinances and regulations, including, without limitation,
dedication and installation of streets, sewers and utilities, shall be borne
solely by Purchaser, and Purchaser agrees that Purchaser shall be solely
SECTION 7. REPRESENTATIONS AND WARRANTIES.

7.1. Seller's Representations. Seller hereby represents and warrants to Purchaser, as of the Execution Date, as follows:

7.1.1 Assessments. To Seller's actual knowledge, no assessments have been made against the Property that are unpaid (except ad valorem taxes for the current year), whether or not they have become liens.

7.1.2 Boundary Lines of Land. To Seller's actual knowledge, there is no pending litigation or dispute concerning the location of the lines and corners of the Land.

7.1.3 No Condemnation. To Seller's actual knowledge there is no pending (or to Seller's actual knowledge, threatened) condemnation, expropriation, eminent domain, change in grade of public street or similar proceeding affecting all or any portion of the Property.

7.1.4 Authorization. Seller has taken all necessary governmental action to authorize the execution of this Agreement, and those persons executing this Agreement on behalf of Seller are authorized to do so; provided, however, that no officer, commissioner, member, employee, agent, contractor or representative of Carbon County or Carbon County Railroad Commission shall be personally liable for any obligation hereunder.

7.1.5 Knowledge of Seller. As used herein and elsewhere in this Agreement, the phrase "actual knowledge of Seller" or similar references shall refer to the actual knowledge of the Carbon County Commissioners, as of the Execution Date and after reasonable inquiry with regard to the representations made herein.

7.1.6 Binding. This Agreement is a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally.

7.1.7 No Violation. To Seller's actual knowledge, entering into this Agreement by Seller is not in violation of any law or order.
7.1.8 **Disclaimer.** Other than as expressly set forth in this Agreement, Seller has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to Purchaser concerning the Property. This disclaimer is set out in more detail in Section 13.1 of this Agreement.

7.2. **Purchaser’s Representations.** Purchaser hereby represents and warrants to Seller, as of the Execution Date and as of the Closing Date, as follows:

7.2.1 **Binding.** This Agreement is a legal, valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally.

7.2.2 **No Violation.** Entering into this Agreement by Purchaser is not a violation of any federal, state, or local law, regulation, or order from any court, regulatory agency, or any or similar legal requirements.

7.2.3 **Authorization.** Purchaser has taken all necessary action to authorize the execution of this Agreement, and those persons executing this Agreement on behalf of Purchaser are authorized to do so; provided, however, that no officer, director, beneficial owner, agent or employee of Purchaser shall be personally liable for any obligation hereunder.

7.3. **Survival and Breach.** Except as otherwise expressly provided herein, Seller’s and Purchaser’s representations and warranties in this Section 7 shall survive for a period of two (2) years after the Closing Date and then shall expire and terminate.

**SECTION 8. ADDITIONAL COVENANTS.**

Seller does hereby covenant and agree with respect to the Property as follows:

8.1. **No New Encumbrances.** From and after the Execution Date to the date and time of Closing, Seller shall not, without the prior written consent of Purchaser, convey any portion of the Property or any rights therein, nor enter into any conveyance or other agreement or amendment to agreement granting to any person or entity any rights with respect thereto or any part thereof, or any interest whatsoever therein, or any option thereto.

**SECTION 9. CLOSING.**

9.1. **Time and Place.** The Closing shall be held at such place that Seller and Purchaser may agree, at such time and on such date as may be specified by written notice from Purchaser to Seller not less than five
(5) business days prior thereto; provided, however, the Closing shall be held no sooner than thirty (30) days after the execution of this Agreement, and not later than ninety (90) days after the date that Purchaser has obtained all necessary authorization from the STB to acquire the Property. Purchaser shall be solely responsible for all STB filings and authorizations. Closing may only be postponed pursuant to an agreement by Seller and Purchaser in writing, but not otherwise.

9.2. Closing Documents to be Delivered by Seller. For and in consideration of, and as a condition precedent to Purchaser's delivery to Seller of the Purchase Price, Seller shall deliver to Purchaser at Seller's expense, on the Closing Date (all of which shall be duly executed and acknowledged where required and shall survive the Closing) the following documents (collectively, the "Closing Documents"): 

9.2.1 The Quitclaim Deed;

9.2.2 An executed copy of the agreement attached hereto as Exhibit E terminating the Lease Agreement as of the Closing Date ("Lease Termination Agreement");

9.2.3 A Closing Statement that shows the payments and adjustments and such other agreements as Seller and Purchaser may approve (including any outstanding payment amount that Purchaser owes Seller under the Lease Agreement for 2020 and for the pro rata portion of 2021 as of the Closing Date in accordance with Purchaser's historical method of calculating such annual lease payments); and

9.2.4 Within sixty (60) days of the Execution Date, Seller shall prepare and send Purchaser a list of the agreements (if any) to be assigned by Seller hereunder. While Seller will diligently seek out all such agreements in the said sixty (60) day period, if Seller later discovers any other agreements prior to Closing, Seller shall promptly provide Purchaser with a copy of the same. It is agreed that if any of the agreements to be assigned pertain partly to the Property and partly to other property now or formerly owned by Seller, the parties will enter into an Assignment and Assumption Agreement that assigns to Purchaser only the portion of the agreements which relate to the Property.

9.3. Delivery of Purchase Price. Subject to the other terms hereof, Purchaser shall deliver the relevant portion of the Purchase Price at the Closing in accordance with the terms of Section 3 above.

9.4. Closing Documents to be Delivered by Purchaser. For and in consideration of, and as a condition precedent to Seller's delivery to Purchaser of the Quitclaim Deed, Purchaser shall deliver to Seller at Purchaser's expense, on the Closing Date (all of which shall be duly
executed and acknowledged where required and shall survive the Closing) the following documents (collectively, the "Closing Documents"):

9.4.1 The Promissory Note; and

9.4.2 An executed copy of the Lease Termination Agreement executed by C&S.

9.5. Costs. At Closing, Seller and Purchaser shall pay their own respective costs and expenses incurred with respect to the consummation of the transactions contemplated hereby (including but not limited to attorneys’ fees), except as provided otherwise in this Agreement. Notwithstanding the foregoing, it is expressly agreed that Purchaser shall pay any and all realty transfer and other transfer taxes or similar charges incident to the conveyance of title to the Property to Purchaser, the cost of recording the deed, the costs of examining title to the Property, the premiums on any title insurance policy it purchases, and all costs incurred by Purchaser with respect to its examination of the Property and any subdivision requirements that Purchaser must comply with as set forth in Section 6.2 above.

SECTION 10. CONDITIONS.

10.1. Purchaser’s Conditions. All of the following shall be conditions to Purchaser’s performance hereunder and must be satisfied or waived by Purchaser at or prior to the Closing or within the time frames found in this Agreement:

10.1.1 Seller shall have executed and delivered the documents and instruments identified in Section 9.2 above to be executed and delivered by Seller

10.1.2 Seller shall not have exercised any right to terminate this Agreement pursuant to the express terms hereof;

10.1.3 Seller shall have performed and complied fully with all other agreements and requirements that are required by this Agreement to be performed or complied with by Seller;

10.1.4 Seller shall have performed or be in compliance with its covenant set forth in Section 8;

10.1.5 The representations and warranties of Seller in Section 7.1 are true and correct in all material respects;
10.2. **Seller's Conditions.** All of the following shall be conditions to Seller's performance hereunder and must be satisfied or waived by Seller at or prior to the Closing or within the time frames found in this Agreement:

10.2.1 The representations and warranties of Purchaser in Section 7.2 are still accurate; and

10.2.2 Purchaser shall have executed and delivered the documents and instruments identified in Section 9.2 above to be executed and delivered by Purchaser;

10.2.3 Within thirty (30) days of the Execution Date, the County Commissioners of Carbon County, Pennsylvania, shall have approved this Agreement, which approval shall be exercised in said Board's sole discretion.

10.3. **Purchaser's and Seller's Conditions.** All of the following shall be conditions to Purchaser's and Seller's performance hereunder and must be satisfied or waived by Purchaser and Seller at or prior to the Closing or within the time frames found in this Agreement:

10.3.1 Notwithstanding anything to the contrary herein, neither Seller nor Purchaser shall be obligated to close unless and until Purchaser has been authorized by the STB to acquire the Property and the associated common carrier obligations associated with the Property; provided, however, that if Purchaser does not obtain such STB approval within ninety (90) days of the execution of this Agreement, Seller shall have the right to terminate this Agreement without any liability or penalty. Purchaser may start the STB approval process at any time after the Execution Date; provided, however, that Purchaser must share a draft of any proposed STB notice of exemption filing with the Seller for review and comment prior to filing.

10.3.2 Neither of the Parties shall be prevented from fulfilling their respective obligations under this Agreement as a result of legislative, judicial, or administrative action.

10.4. **Non-Compliance.** If either Party has not satisfied any of the applicable Conditions set forth in this Section 10.4 as of the Closing Date, this Agreement shall be terminated and the Parties shall have no further liability to each other, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement. Any exercise of any such termination right shall require the terminating party to provide at least thirty (30) days advance written notice to the other party.

10.5. **Default.**
10.5.1 In the event of default by Purchaser to purchase the Property under the terms of this Agreement, Purchaser shall be obligated to pay to Seller an amount equal to all costs and expenses incurred by Seller in connection with the negotiation, execution and performance of this Agreement, including attorneys’ fees, consultant fees, and any other such cost or expense incurred by Seller. In the event of default, Seller shall also have the right to terminate this Agreement by written notice to Purchaser, in which event this Agreement shall become null and void, and all parties hereto shall thereupon be released of all further liability hereunder, except for the foregoing reimbursement obligation and any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement. In the event of a default by Purchaser of the other terms of this Agreement, including those obligations that will survive Closing, Seller shall retain all remedies available in law or equity.

10.5.2 In the event of a default by Seller under the terms of this Agreement, Purchaser shall have the right to (i) terminate this Agreement by delivery of written notice to Seller, in which event this Agreement shall become null and void, and all parties hereto shall thereupon be released of all further liability hereunder, except for any liability or indemnity pursuant to any provision hereof that, by its terms, survives any termination of this Agreement and Seller shall be obligated to pay to Purchaser an amount equal to all costs and expenses incurred by Purchaser in connection with the negotiation, execution and performance of this Agreement, including attorneys’ fees, consultant fees, and any other such cost or expense incurred by Purchaser., or (ii) enforce this Agreement by action of specific performance of Seller’s obligations under this Agreement or otherwise.

SECTION 11. RISK OF LOSS AND CONDEMNATION.

11.1. Loss. Risk of loss or damage to the Property by fire, other casualty or condemnation prior to the Closing shall be governed by the provisions of the Lease Agreement. If as a result of any loss or damage to the Property prior to the Closing Purchaser has the right to terminate the Lease Agreement, then Purchaser shall also have the right to terminate this Agreement. Notwithstanding the foregoing, Seller shall have no duty whatsoever to rebuild any improvements of any nature or type on the Property or otherwise to restore the Property in the event of fire, flood, or other casualty howsoever caused or condemnation.

11.2. Notice of Condemnation. If at any time prior to the Closing all or any portion of the Property is taken by condemnation or eminent domain or any proceeding in condemnation or eminent domain, or Seller becomes aware of the threat of such taking, Seller shall promptly give written notice thereof to Purchaser.
SECTION 12. ASSIGNMENT.

This Agreement may not be assigned by Purchaser to any other party without the prior written consent of Seller, which consent may be withheld for any reason.

SECTION 13. SELLER DISCLAIMERS; PURCHASER RELEASE AND WAIVER.

13.1. Disclaimers.

Other than as expressly set forth in Section 7 of this Agreement, Seller has not made and does not hereby make, and Purchaser acknowledges that neither Seller nor any of its agents or representatives have made, and Seller is not liable for or bound in any manner by any express or implied warranties, guarantees, promises, statements, inducements, representations or information or any indemnification of any kind to Purchaser pertaining to:

13.1.1 the Property or any part thereof;

13.1.2 Seller's title to the Property;

13.1.3 the condition or suitability of the Property, including, but not limited to, the condition of the soil or the presence of Regulated Substances or other contaminants in the soil or improvements, whether known or unknown;

13.1.4 the size, zoning, income potential, expenses or operation of the Property;

13.1.5 the uses that can be made of the same or in any manner or thing with respect thereof, including, without limitation, any existing or prospective leasing or occupancy of all or any part thereof; or

13.1.6 compliance by the Property with any statute, ordinance or regulation, including, but not limited to, zoning laws or Environmental Laws.

Purchaser shall perform at its own expense and rely solely upon its own independent investigations, inspections, tests, surveys, studies, procedures and investigations concerning the physical condition of the Property and compliance of the Property with any applicable law and regulations.

13.2. Moreover, in furtherance of such statements, Purchaser acknowledges and agrees that:

13.2.1 Purchaser is purchasing the Property in "AS-IS, WHERE-IS" CONDITION AND, EXCEPT AS EXPRESSLY SET FORTH IN Section 7, WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES
OF TITLE, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND PURCHASER EXPRESSLY WAIVES ANY CLAIM IT MIGHT OTHERWISE HAVE AGAINST SELLER'S INDEMNIFIED PARTIES FOR PATENT OR LATENT DEFECTS TO THE PROPERTY, INCLUDING WITHOUT LIMITATION, CLAIMS FOR EXISTING CONTAMINATION ARISING FROM THE PRESENCE OF REGULATED SUBSTANCES ON, AT OR UNDER THE PROPERTY UNDER CERCLA OR OTHER ENVIRONMENTAL LAWS.

13.2.2 Purchaser is purchasing the Property subject to all existing laws, statutes, ordinances, codes, rules and regulations.

13.2.3 Upon sufficient notice and at a time mutually and reasonably acceptable to the Parties, and in no event less than thirty (30) days after the Execution Date but not more than ninety (90) days after the Execution Date (so long as said 90th day is at least twenty-one (21) days prior to the Closing Date), Seller agrees to permit Purchaser's representatives to review at Seller's Jim Thorpe, Pennsylvania offices during Seller's normal business hours (i) any environmental test results or reports (if any) that Seller has in its possession and can locate pertaining to the Property, and (ii) any other property-related documents Seller has in its possession and can locate pertaining to the Property, including, but not limited to, valuation maps, track charts, bridge and other drawings about or relating to the Property, and deeds, easements, licenses, leases, encroachment agreements and other documents about any interest in or relating to the Property. Seller agrees to deliver a copy of such material to Purchaser at or within a reasonable period of time after Closing. Seller may satisfy the requirements of this paragraph by means of providing the documents herein described in digital image on a CD or flash drive and may exclude any document that is protected by a privilege.

13.2.4 Except as otherwise provided in the Agreement, Purchaser agrees that, after the Closing Date, Purchaser will make no claims for, and hereby waives as to Seller's Indemnified Parties, any claims that arise at any time out of, in respect to, or in connection with the physical condition, safety, utility, adequacy, merchantability, value, suitability or fitness of the Property, or any portion thereof, or any defects therein, including those relating to (a) public or private street, bridge, underpass or other crossings, (b) any structures that may be contained on the Property, (c) the existing flow or obstruction of surface or subsurface waters, (d) the stability of the soil on, above or adjacent to the Property (except for interests retained by Seller), (e) support for or by adjacent property or the collapse of soil or other materials or buildings onto adjacent property, or (f) any other existing condition of the Property, including any existing contamination from Regulated Substances on, at or under the Property. After the Closing Date, Purchaser shall have all obligations imposed by building or construction codes or licensing or zoning requirements, including obligations relating to
licensing, permits, notices and fees, and all environmental obligations as set forth in Section 14.

13.2.5 This Section 13 shall survive the Closing of the transactions contemplated herein.

SECTION 14. ENVIRONMENTAL MATTERS.

14.1. Assumption of Environmental Liabilities. Purchaser expressly assumes and shall be solely responsible for any and all Environmental Liabilities arising from or related to the Property, regardless of whether such Environmental Liabilities are accrued or unaccrued, known or unknown, or relate to conditions, events or circumstances occurring before or after Closing.

14.2. Environmental Indemnification. Purchaser shall indemnify, defend, and hold harmless Seller from and against any and all such Environmental Liabilities that arise from or relate to the Property.

14.3. Survival. This Section 14 shall survive the Closing of the transactions contemplated herein.

SECTION 15. NOTICES.

Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by overnight courier or by hand delivery, or sent by U.S. registered or certified mail, return receipt requested, postage prepaid, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER:

Carbon County: Carbon County
Board of Commissioners
Carbon County Administration Building
P.O. Box 129
Jim Thorpe, PA 18229-1238
Attn: Chief Clerk/County Administrator

With a copy to:
Daniel A. Miscavige, Esq.
Carbon County Solicitor
3 E. Butler Drive, Suite 102
Drums, PA 18222

PURCHASER:

RBMN: Reading Blue Mountain & Northern Railroad Company
      P.O. Box 218
      Port Clinton, PA 19549
      Attn: Wayne A. Michel, President

With a copy to: [Contact]
     [Address]

SECTION 16. MISCELLANEOUS.

16.1. Rules of Construction. This Agreement shall be construed and interpreted under the laws of the United States of America and the Commonwealth of Pennsylvania. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

16.2. Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative and in addition to all other rights, powers and remedies hereunder and those available at law or in equity. All such rights, powers and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude the future exercise of any or all other rights, powers and remedies granted hereunder or available at law or in equity, except as expressly provided herein.

16.3. No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

16.4. Entire Agreement. This Agreement (including all attachments, which are to be considered a part of the Agreement) contains the entire agreement of the parties hereto with respect to the purchase and sale of the Property and the subject matter hereof, and no representations,
inducements, promises or agreements, oral or otherwise, between the parties not embodied herein or incorporated herein by reference shall be of any force or effect. Any previous agreements or understandings among the parties regarding the subject matter hereof are merged into and superseded by this Agreement.

16.5. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

16.6. Amendments. No amendment to this Agreement shall be binding on any of the parties hereto unless such amendment is in writing and is executed by the party against whom enforcement of such amendment is sought.

16.7. Time of Essence. Time is of the essence of this Agreement.

16.8. Possession. Possession of the Property shall be granted at Closing.

16.9. Beneficiaries. Except as specifically provided herein, this Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended to or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto, any rights pursuant to any provision or term hereof, and all provisions and terms of this Agreement are and shall be for the sole benefit and exclusive benefit of the parties to this Agreement.

16.10. Attorneys' and Consultants' Fees. In any action to enforce this Agreement, to collect damages as a result of a breach of its provisions, or to collect any indemnity provided for herein, Seller and Purchaser shall pay all their own costs in such action, including the costs of investigation, settlement, expert witnesses and reasonable attorneys' fees, together with all additional costs incurred in enforcing or collecting any judgment rendered.

16.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

16.12. No Severability. Because the transaction covered hereby is interconnected and all parts must be effective, if any material term, covenant or provision of this Contract, or the application thereof to any person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof shall no longer remain valid and enforceable
16.13. **Extent of Waiver or Indemnification.** As part of the consideration hereof, each Party agrees that each and all its waiver and indemnification contained herein in favor of the other Party shall extend to and constitute a waiver or indemnification, as applicable, to parent, subsidiaries of the Party and any parent and affiliates of such other Party, and all of their respective officers, directors, agents and employees.

16.14. **Coordination on Public Relations.** The Parties will each designate a representative to produce, coordinate, and seek respective approvals for the timing and dissemination of all public information releases about the transaction contemplated by this Agreement, including Party specific and joint communiques through written, social media, broadcast, and/or in-person communications.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on their behalf, as of the day and year first hereinabove written.

Carbon County Board of Commissioners

Wayne E. Nothstein, Chairman

Rocky C. Ahner, Vice-Chairman

Chris L. Lukasevich, Member

Attest:

Eloise K. Ahner, Chief Clerk/County Administrator

Reading Blue Mountain & Northern Railroad Company

[NAME/TITLE]

Attest:

[NAME/TITLE]
Exhibit List

Exhibit A – Form of Quitclaim Deed (which contains the following subparts):
   A: Legal Description
   B: Exclusions & Reservations
   C: Covenants
   D: Survey
   E: Valuation Maps

Exhibit B – Promissory Note

Exhibit C – Representative Drawing of Crossing

Exhibit D – Representative Drawing of Crossing

Exhibit E – Lease Termination Agreement