

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§		
	§		
Intermodal Equipment Logistics	§	CASE NO.	14-33371-H5-11
	§	CHAPTER	11
	§		
<b>DEBTOR</b>	§		

**DEBTOR’S EMERGENCY APPLICATION TO APPROVE AND ALLOW  
SALE OF PROPERTY FREE AND CLEAR OF LIENS**

**THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE APPLICATION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE APPLICATION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE APPLICATION AT THE HEARING.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**COMES NOW**, Intermodal Equipment Logistics, LLC, Debtor and Debtor-In Possession and files its *Emergency Application to Approve and Allow Sale Free And Clear Of Liens*, and would respectfully show the court as follows:

**SUMMARY OF MOTION**

1. This voluntary Chapter 11 was filed on June 16, 2014.
2. The Debtor, after significant marketing, has identified a buyer for the assets and contracts at its Dallas location.
3. Debtor and purchaser seek an order allowing that sale.

**EMERGENCY CONSIDERATION**

1. The Debtor requests emergency consideration of this Motion.
2. The purchaser, Rally Intermodal, LLC, and the Debtor seek an immediate closing date, and the Purchase and Sale Agreement require court approval.

**JURISDICTION AND VENUE**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a). This matter is a core-proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (N), and (O).
4. Venue is proper in this District pursuant to 28 U.S.C. § 1408.
5. The Court has constitutional authority to enter a final order with respect to this Motion. The sale of property of the estate under 11 U.S.C. § 363(b) has no equivalent in state law, thereby rendering the Supreme Court's opinion in *Stern v. Marshall* inapplicable. See *In re Carlew*, 469 B.R. 666, 672 (Bankr. S.D. Tex. 2012) (discussing See *Stern v. Marshall*, --- U.S. ---, 131 S.Ct. 2594, (2011)). In the alternative, the sale of estate property outside the ordinary course of business is an essential bankruptcy matter which triggers the "public rights" exception. See *id.* The Debtor consents to the constitutional authority of this Court to enter a final order regarding the

proposed sale.

**RELIEF REQUESTED**

4. Debtor requests permission to sell specific assets of their Dallas operation for \$178,000.00 cash.
5. The sale of the assets is governed by the Asset Purchase Agreement attached hereto. See Exhibit A.
6. The assets being sold are encumbered by a note and lien payable to Moody National Bank (“Moody”).
7. Moody has been involved in the negotiation of the sale, and agree to the relief sought.
8. The Debtor is requesting that the assets be sold free and clear of any and all liens held by Moody National Bank, or any other party. The Debtor has entered into an agreement with Moody that resolves all currently outstanding issues. See Exhibit B.
9. The Debtor seeks to sell the Dallas assets pursuant to 11 U.S.C. § 363(b) and (f).
10. A sale of estate property outside the ordinary course of business may be allowed, but the Debtor must articulate a sound business reason for the sale and show that the sale is in the best interest of the estate (*i.e.* that it is fair and reasonable), that the sale has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that the sale is an arms-length transaction. See, e.g., *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1225 (5th Cir. 1986).
11. The business justification for a sale must be considered on a case-by-case basis. *Id.* at 1226. In evaluating such a sale, the Court must balance the need for flexibility with the concerns of affected creditors. *In re Terrace Gardens Park Partnership*, 96 B.R. 707, 715 (Bankr. W.D. Tex. 1989). The Court must

also determine that creditors' lien rights are adequately protected and that the offered price is the highest price obtainable under the circumstances in the particular case. *Id.*; *In re Beker Indus. Corp.*, 63 B.R. 474, 477-479 (Bankr. S.D.N.Y. 1986).

12. The Bankruptcy Code provides that property may be sold free and clear of "any interest in such property other than the estate" only if certain conditions are met. 11 U.S.C. § 363(f). These conditions are as follows:

- a. applicable non-bankruptcy law permits the sale of such property free and clear of such interests;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

13. The proposed sale will result in \$178,000.00 in gross proceeds. While the proceeds are not sufficient to satisfy the lien of Moody, Moody consents to the sale which all parties believe to be the best and highest available use of the assets at this time. As such, the sale is in the best interest of the estate.

14. The Debtor further requests that the stay otherwise imposed by Fed. R. Bankr. P. 6004(g) be waived so that the sale may proceed and close immediately.

15. Accordingly, the Debtor respectfully requests that the Court: (a) approve the sale of the Dallas assets pursuant to the terms of the attached Asset Purchase Agreement, and (b) award such other and further relief to which the Debtor may be justly entitled.

**WHEREFORE**, Debtor requests that the Court enter an order authorizing the sale of the Dallas Property to Rally Intermodal, LLC according to the terms

contained herein, and to grant such other and further relief, at law or in equity, to which the Debtor may be justly entitled.

Dated: May 11, 2017

Respectfully submitted,  
By: /s/Johnie Patterson  
Johnie Patterson  
SBN #15601700  
COUNSEL FOR THE DEBTOR

OF COUNSEL:  
Walker & Patterson, P.C.  
P.O. Box 61301  
Houston, TX 77208-1301  
(713)956-5577 Phone  
(713)956-5570 Fax

**CERTIFICATE OF SERVICE**

I, Johnie Patterson, hereby certify that a true and correct copy of the foregoing Emergency Application to Sell will be served upon the entities on the attached list by U.S. first class mail, postage prepaid or by electronic transmission, on May 11, 2017.

/s/Johnie Patterson  
Johnie Patterson

## **ASSET PURCHASE AGREEMENT**

ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of May 2, 2017, by and between INTERMODAL EQUIPMENT LOGISTICS, L.L.C., a company organized and existing under the laws of the State of Texas (the “**Seller**”) and RALLY INTERMODAL LLC, a company organized and existing under the laws of the State of Delaware (including its assignees, the “**Purchaser**”) and together with the Seller, each, a “**Party**” and, collectively, the “**Parties**”).

**WHEREAS**, on June 16, 2014, the Seller, as Debtor, filed a petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). The Bankruptcy Court issued an Order Confirming Debtor’s Amended Plan of Reorganization on April 11, 2016; and

**WHEREAS**, the Purchaser desires to purchase certain assets of the Seller (other than the Excluded Assets) and to have the right to accept the assignment of certain contracts of the Seller, and the Seller desires to sell such assets and assign such contracts, if any, to the Purchaser, on the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363, 365 and other applicable provisions of the Bankruptcy Code.

**NOW, THEREFORE**, in consideration of the promises set forth herein and in consideration of the representations, warranties, and covenants herein contained, and for other good and valuable consideration described herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

“**Acquired Assets**” shall have the meaning set forth in Section 2.1.

“**Action**” means any claim, demand, action, suit, lawsuit, litigation, hearing, arbitration, proceeding or appeal, whether civil or criminal, administrative or otherwise, by or before any Governmental Authority or arbitrator.

“**Affiliate**” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

“**Agreement**” shall have the meaning set forth in the Preamble.

“**Ancillary Agreements**” means the Bill of Sale and the Assignment Agreement attached as **Exhibits A** and **B**.

“**Sale Order**” shall have the meaning set forth in Section 5.1(b).

“**Assigned Contracts**” shall mean the executory contracts, including leases, of the Seller set forth in **Exhibit 2.1**.

“**Assignment Agreement**” shall have the meaning set forth in Section 4.2(a).

“**Assumed Liabilities**” shall have the meaning set forth in Section 2.3.

“**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978, as amended, and as codified in 11 U.S.C. Section 101, et seq.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

“**Bill of Sale**” shall have the meaning set forth in Section 4.2(a).

“**Business**” means any and all business activities of any kind that are conducted by the Seller.

“**Business Day**” means any day except a Saturday, a Sunday or other day on which commercial banks are required or authorized to close in Texas.

“**Chapter 11 Case**” means the Chapter 11 case of the Seller filed on June 16, 2014 in the Bankruptcy Court.

“**Charges**” shall have the meaning set forth in Section 13.2.

“**Claim**” means any claim, lawsuit, cause of action, demand, suit, inquiry made, hearing, investigation, notice of violation, litigation, proceeding, arbitration, or other dispute, whether civil, criminal, administrative or otherwise, including, without limitation, any and all claims as defined in section 101(5) of the Bankruptcy Code.

“**Closing**” shall have the meaning set forth in Section 4.1.

“**Closing Date**” shall have the meaning set forth in Section 4.1.

“**Confidentiality Agreement**” means that certain Mutual Nondisclosure Agreement, dated January 17, 2017, by and between the Seller and the Purchaser.

“**Dollars**” or “**\$**” means the currency of the United States of America, unless otherwise specified.

“**Encumbrances**” means and includes interests, contractual rights, security interests, mortgages, liens, licenses, pledges, guarantees, charges, easements, reservations, restrictions, clouds, equities, rights of way, options, rights of first refusal and all other encumbrances, whether or not relating to the extension of credit or the borrowing of money.

“**Excluded Assets**” shall have the meaning set forth in Section 2.2.

“**Excluded Liabilities**” shall have the meaning set forth in Section 2.3.

“**Governmental Authority**” means any foreign, United States federal, state or local government, political subdivision or governmental, regulatory or administrative authority, body,

agency, board, bureau, commission, department, instrumentality or court, quasi-governmental authority, self-regulatory organization or stock exchange.

“**Governmental Order**” means any order, judgment, injunction, decree, stipulation, rulings, determination or award entered by or with any Governmental Authority.

“**Indebtedness**” means the combined principal amount of, and accrued interest and prepayment penalties or breakage fees with respect to, all of the Seller’s indebtedness for borrowed money, including all outstanding amounts under (i) notes, bonds, debentures, mortgages and similar instruments, (ii) capitalized leases (other than real estate leases), (iii) obligations under conditional sale or other title retention agreements, (iv) deferred purchase price for property or services (including all “earn out” and similar obligations but excluding accounts payable incurred in the ordinary course of business), (v) obligations, contingent or otherwise, as an account party in respect of letters of credit and letters of guaranty, (vi) deferred compensation and other similar Liabilities or arrangements with employees and independent contractors, (vii) obligations, contingent or otherwise, in respect of any accrued interest, success fees, prepayment penalties, swap and other hedging breakage costs, prepayment or make-whole premiums or penalties and other costs and expenses associated with the repayment of any of the foregoing, and (viii) guarantees and similar commitments relating to the foregoing and Indebtedness of another party secured by an Encumbrance on any asset of the Seller or stock of or any other equity interest in the Seller.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended, together with the Treasury regulations promulgated thereunder.

“**Law**” or “**Laws**” means any and all statutes, laws, ordinances, proclamations, regulations, orders, decrees, consent decrees and rules of any Governmental Authority, in each case, as amended and in effect from time to time.

“**Liability**” means any liability or obligation of any nature, whether known or unknown, liquidated or unliquidated, asserted or unasserted, matured or unmatured, fixed or contingent, secured or unsecured, accrued, absolute or otherwise.

“**Licenses**” means all of the licenses, permits, certificates of occupancy and other governmental approvals or authorizations required for the operation of the Business in compliance with Law as conducted as of the date of this Agreement and as of the Closing.

“**Liens**” means all liens, claims, judgments, licenses, subleases, encumbrances, mortgages, pledges, security interests, conditional sales agreements, charges, options, rights of first refusal, reservations, restrictions or other encumbrances or defects in title of any kind.

“**Losses**” of a Person means any and all costs, losses, Liabilities, obligations, damages, Claims, settlements and expenses (including reasonable fees and expenses of attorneys, accountants and experts incurred in the defense or settlement of any of the foregoing) suffered or incurred by such Person.

“**Material Adverse Effect**” means the loss or damage of a material portion of the Acquired Assets, whether through accident, misuse, theft, sabotage, natural disaster or other cause.



“**Ordinary Course of Business**” means the operation of the Business in the ordinary course of business consistent with the Seller’s usual and customary practices in managing and operating the Business.

“**Party**” or “**Parties**” shall have the meaning set forth in the Preamble.

“**Permitted Encumbrances**” means (a) Encumbrances for Taxes or governmental charges or Claims (i) not yet due and payable or (ii) being contested in good faith by appropriate proceedings being diligently pursued, if a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor, (b) Encumbrances that have been determined by a final, non-appealable order of the Bankruptcy Court to be excused or unenforceable to the extent such excuse or unenforceability will continue to apply in favor of the Purchaser, (c) statutory Encumbrances of landlords, Encumbrances of carriers, warehouse persons, mechanics, landlords, laborers, suppliers, vendors and material persons and other Encumbrances imposed by Law incurred in the ordinary course of business for sums (i) not yet due and payable or (ii) being contested in good faith by appropriate proceedings being diligently pursued, or (d) Encumbrances incurred or deposits made in connection with workers’ compensation, unemployment insurance and other similar types of social security programs or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations, in each case in the ordinary course of business.

“**Person**” means and includes any individual, any legal entity, including, without limitation, any partnership, joint venture, corporation, limited liability company, trust, or unincorporated organization, and any Governmental Authority.

“**Post-Closing Period**” means the period of time commencing with and following the Closing Date.

“**Pre-Closing Period**” means the period of time prior to the Closing Date.

“**Proposed Sale**” shall have the meaning set forth in Section 5.1(a).

“**Purchase Price**” shall have the meaning set forth in Section 3.1.

“**Purchaser**” shall have the meaning set forth in the Preamble.

“**Purchaser Closing Certificate**” shall have the meaning set forth in Section 10.1(a).

“**Restrictive Covenant Agreement**” shall have the meaning set forth in Section 4.2(b).

“**Sale Approval Date**” shall have the meaning set forth in Section 5.1(b).

“**Sale Hearing**” shall have the meaning set forth in Section 5.1(a).

“**Seller**” shall have the meaning set forth in the Preamble.

“**Seller Closing Certificate**” shall have the meaning set forth in Section 9.1(a).

“**Tax**” or “**Taxes**” means any foreign, United States federal, state or local income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including all estimated taxes, deficiency assessments and any interest, penalty or addition thereto.

“**Third Party**” shall mean any Person other than the Seller, the Purchaser or any of their respective Affiliates.

## ARTICLE 2

### **PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF LIABILITIES**

Section 2.1 **Purchase and Sale of Acquired Assets.** Subject to and upon the terms and conditions of this Agreement, the Purchaser shall purchase from the Seller, and the Seller shall grant, transfer, sell, convey, assign and deliver to the Purchaser, as a good faith purchaser for value within the meaning of Section 363(m) of the Bankruptcy Code, free and clear of all claims, Liens and Encumbrances, all rights, title and interest of the Seller in and to the items set forth on **Exhibit 2.1** (collectively, the “**Acquired Assets**”). At any time before the Closing, the Purchaser may add one or more contracts or leases to the Assigned Contracts list set forth in **Exhibit 2.1**. In the event any Assigned Contracts are assigned to the Purchaser, the Seller shall be responsible for payment of any and all amounts due under the Assigned Contracts as listed on **Schedule 2.1** and all cure costs relating to the assignment of any such Assigned Contracts and further shall be responsible for any and all other obligations arising out of the assignment as provided for by section 365 of the Bankruptcy Code.

Section 2.2 **Excluded Assets.** Notwithstanding Section 2.1, the Seller will not be required to sell or transfer to the Purchaser, and the Acquired Assets shall not include, the assets or any right or interest in or to any of the assets specifically set forth on **Exhibit 2.2** (collectively, the “**Excluded Assets**”).

Section 2.3 **No Assumption of Liabilities.** Except as expressly set forth in this Section 2.3, the Purchaser shall not assume and under no circumstance shall the Purchaser be obligated to pay, perform or discharge, and none of the Acquired Assets shall be or become liable for or subject to, any Liabilities, Indebtedness, any cure costs relating to the Assigned Contracts, or other obligations of the Seller (“**Excluded Liabilities**”). The Purchaser shall perform and discharge, when due, to the extent first arising on or after the Closing all obligations and other Liabilities under or relating to the Assigned Contracts (collectively, the “**Assumed Liabilities**”). All other Liabilities and Indebtedness of the Seller shall remain the sole responsibility of the Seller and shall be retained, paid, performed and discharged, if at all, solely by the Seller.

### ARTICLE 3

#### **PURCHASE PRICE; PAYMENT OF PURCHASE PRICE**

Section 3.1 Purchase Price; Payment of Purchase Price. The amount of \$178,000, together with the Assumed Liabilities, shall be referred to herein as the “**Purchase Price**”.

### ARTICLE 4

#### **CLOSING**

Section 4.1 Closing. Subject to the terms and conditions of this Agreement and the sale order, the closing of the purchase and sale of the Acquired Assets (the “**Closing**”) will be at 5:00 PM Central Standard Time at such location agreed to by the Purchaser and the Seller, on the second Business Day following the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in ARTICLE 9 and ARTICLE 10 (other than those conditions that by their nature are to be satisfied at the Closing) (the date of the Closing being herein referred to as the “**Closing Date**”).

Section 4.2 Deliveries by the Seller at the Closing. At the Closing, the Seller will deliver, or cause to be delivered, to the Purchaser:

(a) (i) a bill of sale (the “**Bill of Sale**”) and (ii) an assignment agreement (the “**Assignment Agreement**”), substantially in the forms of **Exhibit A** and **Exhibit B**, respectively, each executed by Seller;

(b) a restrictive covenant agreement substantially in the form of **Exhibit C** (the “**Restrictive Covenant Agreement**”), executed by the Seller and each of its members;

(c) a certified resolution of the Board of Directors and members of the Seller authorizing the sale of the Acquired Assets, the execution and delivery of this Agreement, the Ancillary Agreements and all other documents and agreements delivered in connection herewith by officers of the Seller and consummation of the transactions contemplated hereby and thereby;

(d) physical possession of all of the Acquired Assets wherever located;

(e) evidence of payment by Seller of an estimate of all personal property Taxes, assessments and similar charges to be levied with respect to the Acquired Assets for the Pre-Closing Period, in accordance with Section 8.5;

(f) written confirmation from the counterparties to the Assigned Contracts that there are no amounts outstanding that are due and payable to the counterparties;

(g) evidence that all Indebtedness holders, including, without limitation, Moody National Bank, have released or agree to release at the Closing all Liens and Encumbrances held by such Persons in the Acquired Assets, including UCC-3 termination statements and equivalent Encumbrance termination filings in all applicable non-UCC jurisdictions; and

(h) the documents described in Section 9.1(a).

Section 4.3 Payment of the Purchase Price. At the Closing, the Purchaser shall deliver the Purchase Price in accordance with Section 3.1 to the Seller, or, to the extent necessary to discharge any Liens, Claims, or Encumbrances on the Acquired Assets, to the holders of any Indebtedness. The Purchaser shall also deliver to the Seller a countersigned Assignment Agreement and the countersigned Restrictive Covenant Agreement.

Section 4.4 Further Assurances. Each Party will from time to time, at the reasonable request of any other Party, execute and deliver such other instruments of conveyance and transfer and such other instruments, documents and agreements and take such other actions as such other Party may reasonably request or as may be reasonably requested by any applicable Governmental Authorities or third parties, in each case in order to consummate and make effective any of the transactions contemplated hereby and to vest in the Purchaser the right, title and interest in, to and under the Acquired Assets, to assist the Purchaser in the transfer, assignment, collection and reduction to possession of the Acquired Assets (and the exercise of rights with respect thereto); provided that the requesting Party will prepare any additional documents and instruments and will handle any submission, application, processing, recording and registration and bear all expenses related thereto.

## ARTICLE 5

### BANKRUPTCY COURT MATTERS

Section 5.1 Bankruptcy Court Orders.

(a) No later than five (5) Business Days after execution of this Agreement, the Seller shall file a motion that seeks Bankruptcy Court approval of this Agreement and the transactions contemplated herein including (i) the Seller's request to sell and assign, as applicable, the Acquired Assets to the Purchaser pursuant to this Agreement and Sections 363, 365 and 105 of the Bankruptcy Code, free and clear of all Claims, Liens or Encumbrances in or on the Acquired Assets (the "**Proposed Sale**" and the hearing to consider approval of the Proposed Sale, the "**Sale Hearing**"), (ii) establishing notice and service requirements to all creditors and parties in interest of the Proposed Sale and the Sale Hearing (including the Internal Revenue Service and all other Tax authorities with jurisdiction over the Seller or the Acquired Assets), and (iii) setting a date for the Sale Hearing (collectively, the "**Sale Procedures**") as set forth in the Sale Procedures Order.

(b) The order approving the Proposed Sale (the "**Sale Order**") will be substantially in the form of **Exhibit 5.1(b)**, and the motions and proofs of service relating to the Sale Order will be in form and substance reasonably satisfactory to the Purchaser. Upon timely docketing of the Sale Order (such docketing date being referred to herein as the "**Sale Approval Date**"), the conditions set forth in this Section 5.1(b) shall conclusively be deemed satisfied.

(c) Subject to the Seller's obligations, if any, to comply with any order of the Bankruptcy Court (including, without limitation, the Sale Procedures), the Seller and the Purchaser will promptly make any filings, take all actions and use commercially reasonable efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the

transactions contemplated hereby. The Seller shall use its reasonable best efforts to have the Bankruptcy Court enter the Sale Order as soon as reasonably practicable after the conclusion of the Sale Hearing. The Seller shall use its reasonable best efforts to cause the Sale Procedures Order and the Sale Order to become final orders as soon as possible after their entry.

(d) The Seller shall promptly provide the Purchaser with drafts of all documents, motions, orders, filings or pleadings that the Seller proposes to file with the Bankruptcy Court which relate to the consummation or approval of this Agreement and to the extent practicable will provide the Purchaser with reasonable opportunity to review such filings. The Seller will also promptly provide the Purchaser with written notice and copies of any notice of appeal and any motion or application filed in connection with any appeal from or application for reconsideration of, any of such orders and any related briefs.

## ARTICLE 6

### REPRESENTATIONS OF THE SELLER

The Seller represents and warrants to the Purchaser as follows:

Section 6.1 Corporate Power and Authority. Subject, to the extent applicable, to compliance with the Bankruptcy Code and orders of the Bankruptcy Court, the Seller has the corporate power and authority to own, lease and operate its properties and to conduct its business as is presently conducted.

Section 6.2 Existence and Good Standing. The Seller is a limited liability company duly incorporated, validly existing and in good standing under the laws of the State of Texas. The Seller is duly qualified as a foreign corporation in the jurisdictions set forth on Schedule 6.2 and is in good standing in each jurisdiction in which such qualification is required by law, except where the failure to be so qualified or to be in good standing has not had, or would not reasonably be expected to have, a materially detrimental impact on the Acquired Assets.

Section 6.3 Authority; No Consents. Subject, to the extent applicable, to compliance with the provisions of the Bankruptcy Code and the entry by the Bankruptcy Court of the Sale Order prior to the Closing, the execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Seller and this Agreement has been, and the Ancillary Agreements to which it is a party when executed and delivered by the Seller will be, duly and validly executed and delivered and the valid and binding obligations of the Seller, enforceable against it in accordance with their respective terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. Subject, to the extent applicable, to compliance with the provisions of the Bankruptcy Code and the entry by the Bankruptcy Court of the Sale Order prior to the Closing neither the execution, delivery and performance of this Agreement or the Ancillary Agreements to which the Seller is a party, the consummation by the Seller of the transactions contemplated hereby or thereby, nor compliance by the Seller with any provision hereof or thereof will (I)(A) conflict with, (B) result in any violation of, (C) cause a

default under (with or without due notice, lapse of time or both), (D) give rise to any right of termination, amendment, cancellation or acceleration of any obligation contained in or the loss of any benefit under or (E) result in the creation of any Encumbrance on or against any assets, rights or property of the Seller under (x) any instrument or agreement to which the Seller is a party, or by which the Seller or any of its properties, assets or rights may be bound or (y) any term, condition or provision of any law, statute, rule, regulation, order, writ, injunction, decree, permit, concession, license or franchise of any Governmental Authority applicable to the Seller or any of its properties, assets or rights, and other than any such conflict, violation, default, right, loss or Encumbrance that would not have a materially detrimental impact on the Acquired Assets, or (II) conflict with or result in any violation of the Seller's Certificate of Formation or operating agreement. With the possible exception of the Sale Order, no permit, authorization, consent or approval of or by, or any notification of or filing with, any Governmental Authority is required to be made or obtained by the Seller in connection with the execution, delivery and performance by the Seller of this Agreement or the Ancillary Agreements or the consummation by the Seller of the transactions contemplated hereby or thereby. With the possible exception of the Sale Order, the Seller is not and will not be required to obtain any consent from any Person, in connection with the execution, delivery or performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

Section 6.4 Title to, Condition and Sufficiency of Assets. Seller has good and marketable title to, or valid leasehold interests in, as the case may be, the Acquired Assets held by it, free and clear of all Encumbrances other than Permitted Encumbrances. At the Closing, the Seller will convey to Purchaser good and marketable title to, or valid leasehold interests in, as the case may be, the Acquired Assets, free and clear of all Liens and Encumbrances and, in the case of Assigned Contracts, subject to Purchaser's obligations under Section 2.3. The Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to Closing.

Section 6.5 Assigned Contracts. The Assigned Contracts are valid and enforceable against the Seller. No Seller is, and, to the knowledge of Seller, no other party thereto is, in material default in the performance, observance or fulfillment of any obligation under any Assigned Contract (other than payments or amounts due thereunder, which shall be paid or discharged at or prior to the Closing), and, to the knowledge of the Seller, no event has occurred, which with or without the giving of notice or lapse of time or the occurrence of any event, condition or circumstance would constitute a material default thereunder. The Seller has furnished to the Purchaser complete and accurate copies of all Assigned Contracts (including all related amendments, modifications, addenda and side letters).

Section 6.6 Litigation. Schedule 6.6 identifies any Claim or Action relating to or affecting the Business or the Acquired Assets or the transactions described herein or contemplated hereby that is currently (i) pending or (ii) to the knowledge of the Seller, threatened. Except to the extent set forth in Schedule 6.6, Seller is not in material default with respect to any Governmental Order.

Section 6.7 Compliance with Laws. The Seller has not received any written notice to the effect that with respect to the operation of the Business or the ownership of the Acquired Assets (i) the Seller is not currently in compliance with any applicable Laws or (ii) any currently existing

circumstances are likely to result in a failure of the Seller to comply with, or a violation by the Seller of, any Laws.

Section 6.8 Licenses. Schedule 6.8 sets forth a true and correct list of each of the material Licenses held by the Seller or issued by any Governmental Authority with respect to the operation of the Business or the use or ownership of any of the Acquired Assets. Such Licenses constitute all of the material Licenses required for the conduct of the Business in compliance with Law as presently conducted. Each such License is in full force and effect and the Seller is not in default (or with the giving of notice or lapse of time or the occurrence of any other condition, event or circumstance, would be in default) under any such License in any material respect.

Section 6.9 Real Estate. The Seller does not hold a fee interest or leasehold interest in any real property.

Section 6.10 Intellectual Property. Aside from the Seller's trade name, "Intermodal Equipment Logistics," the Seller does not own any patent, registered and unregistered trademark, service mark, trade dress, logo, trade name, domain name, copyright, mask work and registration or application for any of the foregoing (the "**Intellectual Property**"). To the knowledge of the Seller, no Seller product or service in the conduct of the Business is infringing upon or otherwise violating the rights of any other Person.

Section 6.11 Employees.

(a) Attached as Schedule 6.11 hereto is a list of Seller employees and independent contractors operating within the Business ("**Seller Employees**"), together with each such Seller Employee's date of hire, current practice and compensation (including any bonuses or supplemental payments);

(b) Except as set forth on Schedule 6.11 hereto and wages not yet due and payable, no unpaid compensation is due to any current or former officers, directors, employees or independent contractors of the Seller. Except as set forth on Schedule 6.11, no vacation or sick leave is accrued or payable for any officer, employee or independent contractor of the Seller. Except as set forth on Schedule 6.11, neither the members of Seller, nor any officer, employee or independent contractor of the Seller is subject to any non-competition or non-solicitation agreement that would prevent Purchaser from hiring or consulting (as applicable) with such person. All employees of the Seller are currently eligible and authorized to work at the Business and the Seller has completed valid and accurate Form I-9s that it has determined as being sufficiently supported by genuine documentation proving identity and eligibility to work at the Business which such documentation has been attached to and made part of the Form I-9 and delivered by the Seller to the Purchaser.

Section 6.12 Labor Matters. Within the preceding twelve (12) months, the Seller has not engaged in any unfair labor practice and there are no written complaints against the Seller pending before the National Labor Relations Board or any similar state or local labor agency by or on behalf of any employee of the Seller. The Seller is not a party to, or a participant in any negotiation of, any collective bargaining agreement or other labor agreement with respect to the Business with any labor organization, union, group or association. Within the preceding twelve (12) months, there have been no representation questions, arbitration proceedings, labor strikes, material

slowdowns, stoppages, material grievances or other material labor disputes pending or, to the knowledge of the Seller, threatened with respect to the employees of the Seller, and, during such period, the Seller has not experienced any attempt by organized labor to cause the Seller to organize its employees or to cause the Seller to enter into a binding agreement with organized labor that would cover any or all of its employees.

Section 6.13 Environmental. The Seller is in material compliance with all Laws relating to health, safety, pollution or the environment (“**Environmental Laws**”), and (ii) the Seller is in material compliance with all of its Licenses issued under Environmental Laws. The Seller has not received any written request for information, or been notified that it is a potentially responsible party, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“**CERCLA**”), or any similar state, local or foreign law. The Seller has not received any written notice of any violation or alleged violation of any Environmental Law. There are no writs, injunctions, decrees, orders or judgments outstanding, or any Actions pending or, to the knowledge of Sellers, threatened, any Environmental Laws affecting the Seller.

Section 6.14 Indebtedness. Schedule 6.14 contains a complete list of all Indebtedness of the Seller.

Section 6.15 Tax Matters. The Seller has duly filed with the appropriate Tax authorities all material Tax returns required to be filed by the Seller, and such Tax returns are true and accurate in all material respects. The Seller has paid in full all Taxes that are due and payable by the Seller other than those being contested in good faith, for which adequate reserves have been established in accordance with GAAP. There is no audit or other matter in controversy with respect to any Taxes due and owing by the Seller, and there is no Tax deficiency or Claim assessed or, to the knowledge of the Seller, threatened in writing against the Seller, other than in respect of any such audit, controversy, deficiency, assessment, or proposed assessment that is being contested in good faith, for which adequate reserves have been established in accordance with GAAP. The Seller has withheld all Taxes required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party, and such withheld Taxes have either been paid to the proper Governmental Authority or set aside in accounts for such purpose.

Section 6.16 Broker’s or Finder’s Fees. No agent, broker, Person or firm is, or will be, entitled to any commission or broker’s or finder’s fees from any Party, or from any Affiliate of any Party, in connection with any of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Seller.

## ARTICLE 7

### REPRESENTATIONS OF THE PURCHASER

Representations of the Purchaser. The Purchaser represents and warrants to the Seller as follows:

Section 7.1 Existence and Good Standing; Authorization and Validity of Agreement.



(a) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Purchaser is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, except where the failure to be so qualified or to be in good standing would not prevent, interfere or delay the Purchaser from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement. The Purchaser has the corporate power and authority to own, lease and operate its properties and to conduct its business as is presently conducted.

(b) The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Purchaser and this Agreement has been, and the Ancillary Agreements to which it is a party when executed and delivered by the Purchaser will be, duly and validly executed and delivered and the valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. To the Purchaser's knowledge, neither the execution, delivery and performance of this Agreement or the Ancillary Agreements to which the Purchaser is a party, the consummation by the Purchaser of the transactions contemplated hereby or thereby, nor compliance by the Purchaser with any provision hereof or thereof will (I) (A) conflict with, (B) result in any violation of, (C) cause a default under (with or without due notice, lapse of time or both), (D) give rise to any right of termination, amendment, cancellation or acceleration of any obligation contained in or the loss of any benefit under or (E) result in the creation of any Encumbrance on or against any assets, rights or property of the Purchaser under any term, condition or provision of (x) any instrument or agreement to which the Purchaser is a party, or by which the Purchaser or any of its properties, assets or rights may be bound or (y) any law, statute, rule, regulation, order, writ, injunction, decree, permit, concession, license or franchise of any Governmental Authority applicable to the Purchaser or any of its properties, assets or rights, other than any such conflict, violation, default, right, loss or Encumbrance that would not (i) have a Material Adverse Effect on the business, capitalization, assets (tangible or intangible), Liabilities or operations of the Purchaser or (ii) prevent, interfere or delay the Purchaser from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement, or (II) conflict with or result in any violation of the Purchaser's charter documents or operating agreement. With the possible exception of the Sale Order, no permit, authorization, consent or approval of or by, or any notification of or filing with, any Governmental Authority is required to be made or obtained by the Purchaser in connection with the execution, delivery and performance by the Purchaser of this Agreement or the Ancillary Agreements or the consummation by the Purchaser of the transactions contemplated hereby or thereby. With the possible exception of the Sale Order, the Purchaser is not and will not be required to obtain any consent from any Person, in connection with the execution, delivery or performance of this Agreement or any of the Ancillary Agreements or the consummation of any of the transactions contemplated hereby or thereby.

Section 7.2 Broker's or Finder's Fees. No agent, broker, Person or firm is, or will be, entitled to any commission or broker's or finder's fees from any Party, or from any Affiliate of

any Party, in connection with any of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser.

## ARTICLE 8

### ADDITIONAL AGREEMENTS

#### Section 8.1 Operation of Business.

(a) Except as may be necessary to carry out any of the transactions contemplated by this Agreement or the Ancillary Agreements, or as may be necessary to satisfy the cure requirements of any of the Assigned Contracts, or as consented to by the Purchaser, or as may be required by the Bankruptcy Code or any orders entered by the Bankruptcy Court in the Chapter 11 Case, or as otherwise required by applicable Law, the Seller shall not sell, lease, license, sublicense, encumber or dispose of any Acquired Assets, except for the sale of inventory and collection of accounts receivable in the Ordinary Course of Business provided, however, that the Seller shall not solicit, encourage nor seek to (A) collect any accounts receivable in any fashion than is sooner or more aggressive than the terms of existing purchase orders nor earlier than the Seller's customary practice; (B) discount any accounts receivable without the prior written consent of the Purchaser; or (C) sell any inventory at prices that are less than fair market value or on terms that are not substantially the same as the majority of existing purchase orders.

(b) Except as may be necessary to carry out any of the transactions contemplated by this Agreement or the Ancillary Agreements, or as may be necessary to satisfy the cure requirements of any of the Assigned Contracts, or as consented to by the Purchaser, or as may be required by the Bankruptcy Code or any orders entered by the Bankruptcy Court in the Chapter 11 Case or otherwise required by applicable Law, the Seller shall conduct its operations in the Ordinary Course of Business, and shall:

(i) keep in full force and effect, without amendment, all material rights relating to the Acquired Assets;

(ii) maintain in full force and effect all existing insurance with respect to the Acquired Assets and the Business through the Closing Date in amounts not less than those in effect on the date hereof;

(iii) comply with all Laws applicable to the operations of the Business; and

(iv) maintain all books and records of the Seller relating to the Business in the Ordinary Course of Business;

Section 8.2 Review of the Seller. Subject to the provisions of applicable laws and regulations, prior to the Closing Date, the Seller will, after receiving reasonable advance notice from the Purchaser, give the Purchaser full access to the premises, the books and records (excluding records which are attorney-client privileged or considered attorney work product) and employees and agents of the Seller that relate to the Acquired Assets during normal working hours, for the sole purposes of enabling the Purchaser (i) to further investigate, at the Purchaser's sole

expense, the Acquired Assets and any other appropriate matters germane to the subject matter of this Agreement and the Ancillary Agreements and (ii) to verify the accuracy of the representations and warranties set forth in ARTICLE 6.

Section 8.3 Reasonable Efforts; Cooperation; Consents and Approvals. Subject to their respective obligations to comply with any applicable order of the Bankruptcy Court, each of the Parties agrees to use its commercially reasonable efforts to take, or cause to be taken, all action to do or cause to be done, and to assist and cooperate with each other Party in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement (in each case, to the extent that the same is within the control of such Party), including, without limitation, (i) compliance with any Bankruptcy Court approvals, consents and orders, (ii) the defending of any lawsuits or any other legal proceedings whether judicial or administrative, challenging this Agreement, the Ancillary Agreements or the consummation of the transactions contemplated hereby and thereby and (iii) causing the conditions set forth in ARTICLE 9 and ARTICLE 10 to be satisfied. The Seller will use its commercially reasonable efforts to (i) obtain from the Bankruptcy Court all orders, consents and approvals necessary to consummate the transactions contemplated by this Agreement, including without limitation, the Sale Order and (ii) obtain all necessary waivers, consents and approvals from Governmental Authorities and make all necessary registrations and filings and the taking of all reasonable steps as may be necessary to obtain any approval or waiver from, or to avoid any action or proceeding by, any Governmental Authority.

Section 8.4 Public Disclosure. Except as otherwise required by law or regulation, or as may be necessary or appropriate in connection with the pending Chapter 11 Case, each Party shall consult with the other Party and obtain such other Party's consent, which consent shall not be unreasonably withheld, before issuing any press release or otherwise making any public statements with respect to this Agreement or the matters contained herein and will not issue any such press release or make any such statement prior to such consultation and agreement.

Section 8.5 Apportionment. All personal property Taxes, assessments and similar governmental charges levied with respect to the Acquired Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Pre-Closing Period and the Post-Closing Period as of the Closing Date on a per diem basis. On or prior to the Closing Date, the Seller shall pay an estimate of all real property and personal property Taxes, assessments and similar charges to be levied with respect to the Acquired Assets for the Pre-Closing Period to the appropriate Tax authority. Thereafter, the Seller shall notify the Purchaser upon receipt of any bill for real or personal property Taxes or similar charges relating to the Acquired Assets, part or all of which are attributable to any Post-Closing Period, and shall promptly deliver such Tax bill to the Purchaser who shall pay the same to the appropriate governmental authority; provided, that if such bill covers the Pre-Closing Period, the Seller shall also remit to the Purchaser, prior to the due date of such Tax bill, payment for the proportionate amount of such bill that is attributable to the Pre-Closing Period. If either the Seller or the Purchaser shall make a payment for which such Party is entitled to have such payment made by the other Party under this Section, the other Party shall make reimbursement promptly but in no event later than fifteen (15) Business Days after the presentation of a statement setting forth the amount of reimbursement to which the presenting Party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. Any payment

between the Parties required under this Section 8.5 shall bear interest at the rate per annum determined, from time to time, under the provisions of Section 6621(a)(2) of the Code for each day from the date the relevant Tax is due to be paid to the Tax authority until paid. The Purchaser and the Seller shall cooperate with each other and shall use commercially reasonable efforts to assist the other Party to obtain any and all available tax refunds and rebates. The Seller shall turn over and pay to the Purchaser any portion of any refund or rebate that is attributable to the Post-Closing Period, and the Purchaser shall turn over and pay to the Seller any refund or rebate that is attributable to the Pre-Closing Period. Any refund or rebate that cannot be attributable to either the Pre-Closing Period or the Post-Closing Period shall be pro-rated over the respective periods in accordance with the amount of taxes paid in such periods.

Section 8.6 Access to Records and Certain Personnel. During the Pre-Closing Period, the Seller shall permit the Purchaser and any successors or assigns, its counsel, tax advisors and other Affiliates reasonable access to (i) the financial and other books and records relating to the Acquired Assets (whether in documentary or data form) during the Pre-Closing Period, which access shall include (A) the right of such professionals to copy and use such documents and records as they may reasonably request, and (B) the Purchaser's copying and delivering to the Seller or its professionals (at the Seller's expense) such documents or records as they may reasonably request.

Section 8.7 Cooperation.

(a) The Seller covenants and agrees that, during the period between the date hereof and the Closing, the Seller shall promptly inform the Purchaser in writing of any breaches of the representations and warranties contained in ARTICLE 6 or any breach of any covenant of the Seller.

(b) The Purchaser covenants and agrees that, during the period between the date hereof and the Closing, the Purchaser shall promptly inform the Seller in writing of any breaches of the representations and warranties contained in ARTICLE 7 or any breach of any covenant of the Purchaser.

Section 8.8 Bankruptcy Case. Unless the Purchaser has waived the requirement of entry of the Sale Order, the Purchaser will cooperate fully with the Bankruptcy Court and with the Seller to expedite the Bankruptcy Case and to obtain the order described in ARTICLE 5.

## ARTICLE 9

### CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER

Section 9.1 Closing Conditions to the Purchaser's Obligations. The obligations of the Purchaser to consummate the Closing are conditioned upon the satisfaction or waiver in writing (subject to applicable Law), on or prior to the Closing Date (or such earlier date as is specified), of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Seller contained in ARTICLE 6 and any representations and warranties of the Seller set forth in the Ancillary Agreements qualified by materiality shall be true and correct in all respects, except for such exceptions as are permitted by this Agreement, without further qualification as of the date

hereof and the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all respects as of such date), and all representations and warranties of the Seller contained in ARTICLE 6 and any representations and warranties of the Seller set forth in the Ancillary Agreements that are not so qualified shall be true and correct in all material respects as of the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all material respects as of such date). The Seller shall have delivered to the Purchaser a certificate, dated as of the Closing Date and signed by the Seller's President or other authorized officer of the Seller (the "**Seller Closing Certificate**"), confirming that the conditions set forth in this Section 9.1(a) have been satisfied.

(b) **Performance of Agreements.** Each and all of the agreements of the Seller to be performed on or prior to the Closing pursuant to the terms hereof and the Ancillary Agreements shall have been duly performed in all respects, and the Seller Closing Certificate shall confirm that the conditions set forth in this Section 9.1(b) have been satisfied.

(c) **Closing Deliverables.** The Purchaser shall have received the documents required to be delivered by the Seller to the Purchaser pursuant to Section 4.2.

(d) **No Injunction.** No court or other Governmental Authority of competent jurisdiction shall have issued an order or stay pending appeal which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby.

(e) **Statutes.** No Law of any kind shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, or has the effect of making illegal, the consummation of the transactions contemplated hereby and shall remain in effect.

(f) **Governmental Approvals.** All governmental and other consents and approvals necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

(g) **Bankruptcy Matters.** The Sale Order shall have been entered by the Bankruptcy Court in substantially the form attached to this Agreement.

(h) **No Material Adverse Effect.** During the period from the date hereof to the Closing Date, there shall not have been any occurrence, or any occurrences which, when taken together in the aggregate, would reasonably be expected to constitute a Material Adverse Effect.

## ARTICLE 10

### **CONDITIONS TO THE OBLIGATIONS OF THE SELLER**

Section 10.1 **Conditions to the Seller's Obligations.** The obligations of the Seller to consummate the Closing are conditioned upon the satisfaction or waiver in writing (subject to applicable Law), on or prior to the Closing Date, of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of the Purchaser contained in ARTICLE 7 (and any representations and warranties of the Purchaser set

forth in the Ancillary Agreements) qualified by materiality shall be true and correct in all respects, except for such exceptions as are permitted by this Agreement, without further qualification as of the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all respects as of such date), and all representations and warranties of the Purchaser contained in ARTICLE 7 (and any representations and warranties of the Purchaser set forth in the Ancillary Agreements) that are not so qualified shall be true and correct in all material respects as of the Closing Date, as if made on such date (except for such representations and warranties that relate to a specific date, which shall be true and correct in all material respects as of such date) with only such exceptions as are permitted by this Agreement or which, individually or in the aggregate, would not prevent, interfere or delay the Purchaser from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement. The Purchaser shall have delivered to the Seller a certificate, dated as of the Closing Date and signed by the Purchaser's Manager or other duly authorized officer (the "**Purchaser Closing Certificate**"), confirming that the conditions set forth in this Section 10.1(a) have been satisfied.

(b) Performance of Agreements. Each and all of the agreements of the Purchaser to be performed on or prior to the Closing pursuant to the terms hereof and the Ancillary Agreements shall have been duly performed in all respects, and the Purchaser Closing Certificate shall confirm that the conditions set forth in this Section 10.1(b) have been satisfied.

(c) Payment of Purchase Price. The Purchaser shall have paid to the Seller the Purchase Price in accordance with Section 3.1.

(d) No Injunction. No court or other Governmental Authority of competent jurisdiction shall have issued an order or stay pending appeal which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby.

(e) Statutes. No Law of any kind shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, or has the effect of making illegal, the consummation of the transactions contemplated hereby and shall remain in effect.

(f) Governmental Approvals. All material governmental and other material consents and approvals necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

(g) Bankruptcy Matters. The Sale Order shall have been entered by the Bankruptcy Court in substantially the form attached to this Agreement, and no notice of appeal from the Sale Order shall have been filed on or before the Closing.

## ARTICLE 11

### INDEMNIFICATION

#### Section 11.1 Indemnification.

(a) Indemnification by the Seller. The Seller agrees to indemnify, defend and hold the Purchaser, and its officers, directors and affiliates (the "**Purchaser Parties**"), harmless from and

in respect of any and all Losses that they may incur arising out of or due to (i) any inaccuracy in or breach of any representation or warranty made by the Seller in or pursuant to this Agreement, (ii) any breach by the Seller of its covenants or agreements set forth in this Agreement or any Ancillary Agreement or (iii) any Excluded Liabilities or Excluded Assets.

(b) Indemnification by Purchaser. The Purchaser agrees to indemnify, defend and hold the Seller, its officers, directors and affiliates, harmless from and in respect of any and all Losses that they may incur arising out of or due to (i) any breach of any representation or warranty made by Purchaser in or pursuant to this Agreement, (ii) any breach of its covenants or agreements in this Agreement or any Ancillary Agreement, (iii) any Assumed Liabilities, or (iv) the operation of Acquired Assets after the Closing.

(c) Survival of Representations and Warranties. The several representations and warranties of the parties contained in this Agreement or in any instrument delivered pursuant hereto will survive the Closing as follows:

(i) The representations and warranties made in Section 6.1, Section 6.2, Section 6.3, Section 6.4, Section 6.13, and Section 6.15 (collectively, the “**Fundamental Representations**”) will survive indefinitely; and

(ii) All representations and warranties made in ARTICLE 6 other than the Fundamental Warranties (the “**Business Warranties**”) will survive until the date that is eighteen (18) months after the Closing.

(d) Notice and Opportunity to Defend. If there occurs an event which a party (an “**Indemnified Party**”) asserts is an indemnifiable event pursuant to Section 11.1(a) or Section 11.1(b), the Indemnified Party shall notify the other party obligated to provide indemnification (an “**Indemnifying Party**”) promptly. If such event involves (i) any Claim or (ii) the commencement of any Action by a third person, the Indemnified Party shall give such Indemnifying Party prompt written notice of such Claim or the commencement of such Action. Such notice shall be a condition precedent to any Liability of the Indemnifying Party hereunder; provided, however, that the failure to provide prompt notice as provided herein will not relieve the Indemnifying Party of its obligations hereunder unless such failure prejudices the Indemnifying Party hereunder. In case any such Action shall be brought against any Indemnified Party and it shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party shall be entitled to participate in the defense of such Action and, to the extent that it shall wish, at its own expense, to assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party. In the event the Indemnifying Party shall assume the defense of such Action, (a) the Indemnified Party agrees to cooperate fully with the Indemnifying Party and its counsel in the defense against any such asserted Liability and (b) the Indemnified Party shall have the right to participate (at the Indemnified Party’s expense) in the defense of such asserted Liability. No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement without the consent of the Indemnified Party (a) if such judgment or settlement does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a full and unconditional release from all Liability in respect of such Claim, (b) if such judgment or settlement would result in the finding or admission of any violation of Law by such Indemnified Party, or (c) if as a result of such consent or settlement injunctive or other equitable relief would be imposed against the Indemnified Party

or such judgment or settlement could interfere with or adversely affect the Indemnified Party. No Indemnifying Party shall be liable for any settlement effected without its consent unless such party shall have declined to assume the defense of such matter in accordance with the provisions of this Section 11.1(d).

(e) Purchase Price Adjustment. All payments for indemnifiable Losses made pursuant to this ARTICLE 11 shall be treated as adjustments to the Purchase Price.

## ARTICLE 12

### TERMINATION

Section 12.1 Events of Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of the Parties;

(b) by either Party, if the Closing Date shall not have occurred within sixty (60) days of execution of this Agreement; provided, that the right to terminate this Agreement under this Section 12.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall be the cause of the failure of the Closing Date to occur on or before such date;

(c) by the Seller if (i) there shall have been a material breach on the part of the Purchaser of any of its representations, warranties or covenants such that the conditions set forth in Section 10.1(a) or Section 10.1(b) would not be satisfied as of the time of such breach, (ii) the Seller shall have given written notice of such breach to the Purchaser, (iii) at least two (2) Business Days shall have elapsed since the delivery of such written notice to the Purchaser and (iv) such breach shall not have been cured in all material respects; provided that the Seller may not terminate this Agreement pursuant to this Section 12.1(c) if it shall have materially breached this Agreement and such breach has not been duly cured;

(d) by the Purchaser if (i) there shall have been a material breach on the part of the Seller of any of its representations, warranties or covenants such that the conditions set forth in Section 9.1(a) or Section 9.1(b) would not be satisfied as of the time of such breach, (ii) the Purchaser shall have given written notice of such breach to the Seller, (iii) at least two (2) Business Days shall have elapsed since the delivery of such written notice to the Seller and (iv) such breach shall not have been cured in all material respects; provided that the Purchaser may not terminate this Agreement pursuant to this Section 12.1(d) if it shall have materially breached this Agreement and such breach has not been duly cured;

(e) by any Party, if there shall be any Law of any Governmental Authority that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if any judgment, injunction, order or decree of any competent authority prohibiting such transactions is entered and such judgment, injunction, order or decree shall have become final and non-appealable; or



(f) by Purchaser if (i) the Sale Order is not issued by the Bankruptcy Court within sixty (60) days of execution of this Agreement or (ii) in the event that a stay pending appeal or a writ of mandate of the Sale Order is granted on behalf of any party.

If either Party wishes to terminate this Agreement pursuant to this Section 12.1, such Party will deliver to the other Party a written termination notification stating that such Party is terminating this Agreement and setting forth a brief statement of the basis on which such Party is terminating this Agreement.

Section 12.2 Effect of Termination. Except as otherwise provided in this Section 12.2, in the event that this Agreement shall be terminated pursuant to Section 12.1, all further obligations of the Parties under this Agreement shall terminate without further Liability or obligation of any Party to any other Party hereunder, provided, however, that (i) Section 8.4, 11.2, 12.1, 12.3, 12.4, 12.6 and 12.22 shall survive the termination of this Agreement; (ii) the Parties will remain bound by the provisions of the Confidentiality Agreement; and (iii) no Party shall be released from Liability hereunder if this Agreement is terminated and the transactions abandoned by reason of (A) failure of such Party to have performed its obligations hereunder in any respect or (B) any willful misconduct, fraud or intentional misrepresentation made by such Party of any matter set forth herein.

## ARTICLE 13

### MISCELLANEOUS

Section 13.1 Expenses; Fees. Except as otherwise set forth in this Agreement, the Parties shall pay all of their own expenses relating to the transactions contemplated by this Agreement.

Section 13.2 Transfer Taxes. The Parties recognize and acknowledge that the sale, transfer, assignment and delivery of the Acquired Assets may be exempt under Section 1146(c) of the Bankruptcy Code and the Sale Order from all state and local transfer, recording, stamp or other similar transfer Taxes that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets. The Seller on the one hand and the Purchaser on the other hand shall each bear and pay one-half of any transfer Taxes that may become payable in connection with the sale of the Acquired Assets to the Purchaser, the assumption by the Purchaser of the Assumed Liabilities or any of the other transactions contemplated by this Agreement or the Ancillary Agreements (the "Charges"). The Seller and the Purchaser agree to use their commercially reasonable efforts to minimize, and to cooperate with and assist the other in, minimizing the Charges.

Section 13.3 APPLICABLE LAW. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH U.S. FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF TEXAS SHALL GOVERN, WITHOUT REFERENCE TO CHOICE OF LAW PRINCIPLES, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

Section 13.4 JURISDICTION; WAIVER OF JURY TRIAL. THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF TEXAS AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF TEXAS WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY CONSENTS AND SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.5 Captions; Headings; Table of Contents. The Article and Section captions and the headings and table of contents set forth herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

Section 13.6 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed, certified or registered mail with postage prepaid, or sent by telex, telegram or telecopy and a confirmation of transmission is obtained, as follows:

if to the Seller, to:

Intermodal Equipment Logistics, L.L.C.  
PO Box 917  
League City, TX 77574

with a copy to:

Johnie Patterson  
Walker & Patterson PC  
4815 Dacoma Street  
Houston, TX 77092

if to the Purchaser, to:

Rally Intermodal Logistics, L.L.C.  
1515 East Barbours Cut Blvd.  
Suite 146  
LaPorte, TX 77571

with a copy to:

Ports America  
525 Washington Blvd, Suite 1660  
Jersey City, NJ 07310  
Attn: General Counsel

or to such other Person or address as any Party shall specify by notice in writing to each of the other Parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of delivery unless if mailed by registered or certified mail, postage prepaid, in which case on the third Business Day after the mailing thereof except for a notice of a change of address, which shall be effective only upon receipt thereof.

Section 13.7 Assignment; Parties in Interest. This Agreement may not be transferred, assigned, pledged or hypothecated by the Seller (whether voluntarily, involuntarily, by way of merger or otherwise) to any other Person without the prior written consent of the Purchaser. This Agreement may be transferred or assigned by the Purchaser to any Affiliate of the Purchaser without the consent of the Seller, provided however that the Purchaser shall remain fully liable for the obligations of the Purchaser under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 13.8 Counterparts. This Agreement may be executed in two (2) or more counterparts, in original form or by facsimile, each of which shall be deemed an original, but all of which together will constitute one and the same document.

Section 13.9 Entire Agreement. This Agreement, including the exhibits, schedules and other documents referred to herein which form a part hereof, and the Confidentiality Agreement, contains the entire understanding of the Parties with respect to the subject matter contained herein and therein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such subject matter.

Section 13.10 Severability; Enforcement. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each Party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by Law, and each Party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

Section 13.11 Amendments; Waiver. This Agreement may not be changed orally, but only by an agreement in writing signed by all Parties. Any provision of this Agreement can be waived, amended, supplemented or modified by written agreement of the Parties. The failure of any Party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance.

Section 13.12 No Strict Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

Section 13.13 Pronouns. As used herein, all pronouns shall include the masculine, feminine, neuter, singular and plural thereof whenever the context and facts require such construction.

Section 13.14 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any Person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or Liabilities whatsoever.

Section 13.15 Interpretation. This Agreement has been negotiated between the Parties and will not be deemed to be drafted by, or the product of, any party. As such, this Agreement will not be interpreted in favor of, or against, any party.

Section 13.16 No Joint Venture. No Party hereto shall make any warranties or representations, or assume or create any obligations, on the other Party's behalf except as may be expressly permitted hereunder or in writing by such other Party. Each Party shall be solely responsible for the actions of all its respective employees, agents and representatives.

Section 13.17 Specific Performance. The transactions contemplated by this Agreement are unique transactions and any failure on the part of either Party to complete the transactions contemplated by this Agreement or any of the Ancillary Agreements on the terms of this Agreement or any of the Ancillary Agreements will not be fully compensable in damages and the breach or threatened breach of the provisions of this Agreement or any of the Ancillary Agreements would cause the non-breaching Party irreparable harm. Accordingly, in addition to and not in limitation of any other remedies available to the non-breaching Party for a breach or threatened breach of this Agreement or any of the Ancillary Agreements, such Party will be entitled to specific performance of this Agreement or any of the Ancillary Agreements upon any breach by the other Party, and to an injunction restraining any such party from such breach or threatened breach.

Section 13.18 No Other Representations. The Parties acknowledge that, except as expressly set forth in this Agreement or the Ancillary Agreements, neither Party has made or is making any representations or warranties whatsoever to the other, implied or otherwise.

Section 13.19 Access of Seller to Books and Records. At all times after the Closing Date, Purchaser will give Seller and Seller's advisors and representatives reasonable access to any books and records of Seller that are included in the Acquired Assets (to the extent such books and records relate to any period prior to the Closing Date).

Section 13.20 Entire Agreement. This Agreement and the Ancillary Agreements set forth the entire understanding of the Parties and supersede all other agreements and understandings between the Parties relating to the subject matter hereof and thereof.

Section 13.21 Confidentiality. On and at all times from the date hereof, the Parties shall remain subject to the Confidentiality Agreement.

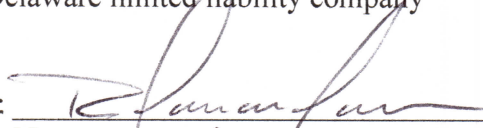
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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its officers thereunto duly authorized, all as of the day and year first above written.

INTERMODAL EQUIPMENT LOGISTICS,  
L.L.C.,  
a Texas limited liability company

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

RALLY INTERMODAL LLC,  
a Delaware limited liability company

By:  \_\_\_\_\_  
Name: R. NORMAN LAMB  
Title: MANAGER

**Exhibit 2.1**

**ACQUIRED ASSETS**

The Acquired Assets shall include any and all interests of the Seller in the following:

- (a) Equipment List [attached]

**ATTACHMENT TO EXHIBIT 2.1**

List of Assigned Contracts:

- (a) CONTRACT FOR WORK OR SERVICES dated September 28, 2015 by and between Union Pacific Railroad Company and Intermodal Equipment Logistics, L.L.C.
- (b) AMENDED AND RESTATED MAINTENANCE AND REPAIR AGREEMENT dated April 12, 2012 by and between Interpool, Inc., d/b/a TRAC Intermodal and Intermodal Equipment Logistics, L.L.C.



**Exhibit 2.2**

**EXCLUDED ASSETS**

Notwithstanding anything contained in this Agreement or **Exhibit 2.1** to the contrary, the Excluded Assets shall include:

- (a) all rights of the Seller under this Agreement, the Ancillary Agreements and the agreements and instruments executed and delivered to the Seller by the Purchaser pursuant to this Agreement;
- (b) all of the Seller's books, records, ledgers, files and documents relating to Excluded Assets;
- (c) The Seller's formal corporate records, including its certificate of incorporation, bylaws, minute books, corporate books, stock transfer records and other records having to do with the corporate organization of the Seller;
- (d) all personnel records and other records that the Seller is required by any Law to retain in its possession, provided that the Seller shall provide copies of such records to the Purchaser unless prohibited from doing so by Law; and
- (e) all causes of action under chapter 5 of the Bankruptcy Code.

**Exhibit 5.1(b)**

**FORM OF SALE ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

<p>In re:</p> <p>INTERMODAL EQUIPMENT LOGISTICS, LLC</p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 11</p> <p>Case No. 14-33371-H5-11</p> <p>(Jointly Administered)</p>
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**ORDER (I) APPROVING AND AUTHORIZING THE SALE  
OF CERTAIN ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) AUTHORIZING  
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS;  
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>1</sup> of the Debtor for entry of an order, pursuant to sections 105(a) 363, and 365 of the Bankruptcy Code, approving and authorizing the sale of certain assets to the Purchaser, free and clear of all liens, claims, encumbrances, and other interests and authorizing the assumption and assignment of certain executory contracts; and the Court having jurisdiction to consider the Motion, the *Declaration of \_\_\_\_\_ in Support of the Debtor's Motion for Entry of an Order (I) Approving and Authorizing the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (III) Granting Related Relief* filed on \_\_\_\_\_ [Docket No. \_\_\_\_] (the "Declaration") and the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C.

<sup>1</sup> Capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

§ 1408; and notice of the Motion being adequate and appropriate under the particular circumstances; and upon the record of the Motion, the Declaration and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor and its estate, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Asset Purchase Agreement, attached to the Motion as Exhibit [], is hereby approved in its entirety.
3. The Debtor is hereby authorized to sell the assets and assign certain executory contracts to the Purchaser under the terms and conditions set forth in the Asset Purchase Agreement, free and clear of any liens, claims, encumbrances, and other interests (including all rights of setoff or recoupment of any party to any executory contract, arising before April 2017), with all such liens, claims, encumbrances and other interests to attach to the sale proceeds in the same order of priority, with the same validity, force and effect as such liens, claims, encumbrances or interests had in the assets prior to the sale, subject to any claims and defenses the Debtor may have with respect to the same. The Debtor shall satisfy all cure costs, if any, related to the assumption of any executor contracts.
4. The Purchaser is hereby deemed to be a good faith purchaser of the assets and is entitled to the protections of section 363(m) of the Bankruptcy Code.

5. Notwithstanding the provisions of Bankruptcy Rule 6004 or any applicable provisions of the local rules, this Order shall be effective and enforceable immediately upon the entry hereof.

6. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: April \_\_, 2017  
Houston, Texas

\_\_\_\_\_  
THE HONORABLE \_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**FORM OF BILL OF SALE**

FOR THE CONSIDERATION described in the Asset Purchase Agreement (the “Agreement”) dated as of \_\_\_\_\_ between Rally Intermodal LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Buyer”) and Intermodal Equipment Logistics, L.L.C., a company organized and existing under the laws of the State of Texas (the “Seller”), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby grants, bargains, sells, conveys, assigns, transfers, sets over and delivers to the Buyer all of the Seller’s right, title and interest in and to the Acquired Assets, free and clear of all claims, Liens and Encumbrances. Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement.

The Seller hereby constitutes and appoints the Buyer, its successors and assigns, the true and lawful agent and attorney-in-fact of the Seller to receive, demand, assert, collect, enforce and sue for any of the Acquired Assets, either in the name of the Seller or in the name of the Buyer, its successors and assigns, all for the use and benefit and at the expense of the Buyer, its successors and assigns. The Seller hereby acknowledges and declares that the foregoing powers are coupled with an interest in favor of the Buyer, and are and shall be irrevocable by the Seller.

The Seller hereby covenants and agrees that it will at any time and from time to time, at the request of the Buyer, its successors or assigns, execute and deliver to it or them such new or confirmatory instruments and other and further instruments, and take or cause to be taken such further action which the Buyer, its successors or assigns, may reasonably request to vest in it or them all of the Acquired Assets or to enable the Buyer, its successors and assigns, to realize upon or otherwise to enjoy any of the same or to carry into effect the intent and purpose hereof.

This Bill of Sale shall be binding upon the Seller and its successors, assigns, representatives and heirs, and shall inure to the benefit of the Buyer and its successors and assigns.

This Bill of Sale shall be governed by and construed in accordance with the internal laws of the State of Texas without regard to principles of conflict of laws.

Nothing in this Bill of Sale shall constitute or be construed as a waiver or limitation of either parties’ rights, powers, duties, obligations or remedies under the Agreement or any other agreement between the parties. In the event of any conflict between the terms, conditions and provisions of this Bill of Sale and the Agreement any other agreement between the parties, the terms, conditions and provisions of the Agreement or such other agreement shall govern.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be duly effective as of the \_\_\_ day of \_\_\_\_\_, 2017.

INTERMODAL EQUIPMENT LOGISTICS,  
L.L.C.,  
a Texas limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit B**

**FORM OF ASSIGNMENT AGREEMENT**

THIS ASSIGNMENT AGREEMENT (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2017, by and between Rally Intermodal, LLC, a company organized and existing under the law of the State of Delaware ("Assignee"), and Intermodal Equipment Logistics, L.L.C., a company organized and existing under the law of the State of Texas ("Assignor").

**Recitals:**

A. Pursuant to that certain Asset Purchase Agreement dated as of \_\_\_\_\_, (the "Asset Purchase Agreement"), [as approved by the United States Bankruptcy Court for the District of Southern District of Texas in chapter 11 case number 14-33371], Assignor has agreed to assign to Assignee all of its right, title and interest in and to the Assigned Contracts (as defined in the Asset Purchase Agreement).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Asset Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby grants, bargains, sells, conveys, assigns, transfers, sets over and delivers to Assignee, all of its right, title and interest in and to the Assigned Contracts.

2. Assumption. Subject to the terms and conditions set forth herein, Assignee hereby accepts the assignment of, and, solely to the extent arising as of or after the date hereof, assumes and agrees to fulfill, perform and observe all of the terms, conditions and obligations of Assignor with respect to, the Assigned Contracts.

3. Further Assurances. Each of the parties hereto agrees to cooperate at all times from and after the execution and delivery of this Agreement with respect to the matters described herein, and to execute such further assignments, releases, acceptances, amendments, notifications, consents and other documents as may be reasonably requested by the other party for the purpose of giving effect to, evidencing or giving notice of the transactions contemplated by this Agreement.

4. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of Assignee, Assignor and their respective successors and assigns.

5. Modification. This Agreement may be modified only by a written instrument duly executed and delivered by each of the parties hereto.

6. Governing Law. This Agreement is a contract made under, and shall be governed by and construed in accordance with, the laws of the State of Texas applicable to contracts made and to be performed entirely within such State and without giving effect to choice of law principles of such State.

7. Waiver. Nothing in this Agreement shall constitute or be construed as a waiver or limitation of either parties' rights, powers, duties, obligations or remedies under any other agreement between the parties. In the event of any conflict between the terms, conditions and provisions of this Agreement and the Asset Purchase Agreement or any other agreement between the parties, the terms, conditions and provisions of the Asset Purchase Agreement or such other agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

INTERMODAL EQUIPMENT  
LOGISCTICS, L.L.C.,  
a Texas limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

RALLY INTERMODAL LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**Exhibit C**

**FORM OF RESTRICTIVE COVENANT AGREEMENT**

This RESTRICTIVE COVENANT AGREEMENT (this "Agreement") dated \_\_\_\_\_, 2017 is between \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ ("Restricted Party") and RALLY INTERMODAL LLC, a Delaware limited liability company (the "Purchaser"). Purchaser and the Restricted Party are collectively referred to herein as the "Parties." Capitalized terms used herein are defined in Article IV.

**RECITALS**

A. Restricted Party and Purchaser are parties to that certain Asset Purchase Agreement dated as of March \_\_, 2017 (the "Purchase Agreement"), pursuant to which Restricted Party is selling to Purchaser certain assets of Restricted Party for the Purchase Price set forth therein, including the assumption by Purchaser of specified liabilities of Restricted Party.

B. Restricted Party has been engaged in the Business and will derive direct benefit from the consummation of the transactions contemplated in the Purchase Agreement.

C. Restricted Party has had and may continue to have knowledge of and access to Confidential Information that is proprietary to the Business, highly sensitive and constitutes valuable assets of the Business.

D. Such Confidential Information shall be conveyed to Purchaser pursuant to the Purchase Agreement.

E. The going concern value of the Business would be substantially diminished if Restricted Party were to compete with the Business or Purchaser or engage in other harmful behavior.

F. Pursuant to Section 4.2(b) of the Purchase Agreement, Restricted Party's execution and delivery of this Agreement is a condition to the closing of the transactions contemplated by the Purchase Agreement, and Purchaser would not consummate the transactions contemplated by the Purchase Agreement without entering into this Agreement with Restricted Party.

G. Definitions of capitalized terms used in this Agreement are set forth in Section 4.1.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth in this Agreement and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**ARTICLE I  
AGREEMENT**

**1.1 Adoption of Recitals; Effectiveness of Agreement.** The Parties adopt the foregoing Recitals and agree and affirm that the construction of this Agreement will be guided thereby.

**1.2 Inducement; Additional Consideration.** As an inducement for Purchaser to consummate the transactions contemplated by the Purchase Agreement, the Restricted Party agrees to the covenants and restrictions contained in this Agreement.

## **ARTICLE II RESTRICTIVE COVENANTS**

The Restricted Party has sensitive and valuable trade secrets, proprietary information and other Confidential Information pertaining to the Business, which will constitute a portion of the Purchased Assets under the Purchase Agreement, which constitute valuable business assets of Restricted Party and, upon the consummation of the transactions contemplated by the Purchase Agreement, will constitute valuable business assets of Purchaser, and the use, application or disclosure of such Confidential Information would cause immediate and irreparable harm to the Business and Purchaser, which could not be adequately remedied through the payment of monetary damages. Therefore, as an inducement for Purchaser to enter into the Purchase Agreement and to protect the Confidential Information and other legitimate business interests of the Business and Purchaser, Restricted Party agrees to be bound, and will require its Affiliates to be bound, by the restrictive covenants contained in this Article II, which the Parties expressly agree are reasonably and narrowly tailored to protect the Confidential Information and other legitimate business interests of the Business and Purchaser.

**2.1 Confidentiality.** Restricted Party will, and will require its Affiliates to, keep confidential and not disclose to any other Person or use for the Restricted Party's own benefit or the benefit of any other Person (other than Purchaser) any Confidential Information, unless and only to the extent that Confidential Information is required to be disclosed by any Law or Order; provided that as soon as practicable before such disclosure, Restricted Party will, and will require its Affiliates to, give Purchaser prompt written notice of such disclosure to enable Purchaser to seek a protective order or otherwise preserve the confidentiality of such information. Restricted Party will, and will require its Affiliates to, keep confidential and not disclose to any other Person the terms of this Agreement; provided that a Restricted Party may disclose the terms of this Agreement to the Restricted Party's representatives (such as tax advisors and attorneys) who need to know such information for legitimate business purposes and agree to be bound by the terms of this Agreement.

**2.2 Non-Competition.** During the Restricted Period, Restricted Party will not, and will require its Affiliates to not, directly or indirectly, own, manage, operate, join, control, finance or participate in, or participate in ownership, management, operation, control or financing of, or be connected as an owner, investor, partner, joint venturer, member, director, limited liability company manager, employee, independent contractor, consultant or other agent of, any Person or enterprise (other than Purchaser) that is engaged in any Competing Business anywhere in or with respect to the Restricted Territory; provided, however, that nothing in this Section 2.2 will prohibit the Restricted Party and its Affiliates from owning, in the aggregate, less than 0.50% of any class

of securities of a publicly traded Person so long as none of the Restricted Party and its Affiliates participates in any way in the management, operation or control of such Person.

**2.3 Non-Solicitation.** During the Restricted Period, Restricted Party will not, and will require its Affiliates to not, directly or indirectly:

(a) hire or otherwise retain, solicit or induce or attempt to hire, retain, solicit or induce (including by recruiting, interviewing or identifying or targeting as a candidate for recruitment) any member of the board of directors, board of managers or similar governing body, officer, employee or independent contractor of Purchaser who is acting in such capacity or acted in such capacity at any time within the twelve (12)-month period immediately preceding the date of such solicitation, inducement or attempt (a "Business Associate") to terminate, restrict or hinder such Business Associate's association with Purchaser or any of its Affiliates or interfere in any way with the relationship between such Business Associate and Purchaser or any of its Affiliates, or attempt or assist anyone else to do so; provided, however, that general solicitations published in a journal, newspaper or other publication or posted on an internet job site and not specifically directed toward Business Associates will not constitute a breach of the covenants in this Section 2.3(a);

(b) hire or otherwise retain the services of a Business Associate as an employee, officer, director, limited liability company manager, independent contractor, licensee, consultant, advisor, agent, or in any other capacity, or attempt or assist anyone else to do so; or

(c) interfere with the relationship between Purchaser or any of its Affiliates and any Person who is a supplier, vendor, lessor, lessee, dealer, distributor, licensor, licensee, proprietor, partner, stockholder, holder of equity interests, lender, joint venturer, investor, consultant, agent, customer, or any other Person having a business relationship with Purchaser or any of its Affiliates.

**2.4 Non-Disparagement.** After the date of this Agreement, Restricted Party will, and will require its Affiliates to:

(a) not, directly or indirectly, make any disparaging, derogatory, negative or knowingly false statement about Purchaser or any of its Affiliates and their respective equityholders, members, directors, limited liability company managers, officers, employees, agents, successors and permitted assigns, or any of their respective businesses, operations, financial condition or prospects, except as required by applicable Law or Order;

(b) cooperate in good faith with Purchaser, at Purchaser's expense, in the defense of any pending or threatened Action arising from or related to any services rendered by or on behalf of Purchaser or any of its Affiliates, and Restricted Party will, and will require its Affiliates to, work in good faith with Purchaser in preparing any such defense and in securing the consent of Purchaser before agreeing to settle any such dispute; and

(c) not, directly or indirectly, provide technical or professional opinions as an expert in the review of records for claims or Actions brought against Purchaser or any of its

Affiliates or any member, director, limited liability company manager, officer, or employee of Purchaser or any of its Affiliates.

**2.5 Independence.** The existence of any Action of Restricted Party against Purchaser or any of its Affiliates, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by Purchaser of any covenant or agreement of Restricted Party contained in this Agreement. Nothing in this Agreement will supersede or otherwise adversely affect the validity of any restrictive covenant (including confidentiality, non-competition, non-solicitation and similar covenants) contained in any other agreement to which Restricted Party and Purchaser or any of their Affiliates are parties.

**2.6 Scope of Covenants; Equitable Relief.** Restricted Party acknowledges and agrees, and will require its Affiliates to acknowledge and agree, that (a) the restrictive covenants contained in this Article II and the territorial, time, activity and other limitations set forth herein are commercially reasonable and do not impose a greater restraint than is necessary to protect the goodwill and legitimate business interests of Purchaser, (b) any breach of the restrictive covenants in this Article II will cause immediate and irreparable harm to Purchaser, which could not be adequately remedied through the payment of monetary damages, (c) if any breach of any such covenant occurs, then Purchaser will be entitled to injunctive relief (without the posting of a bond or other security, or the need to establish damages) in addition to such other legal and equitable remedies that may be available (without limiting the availability of legal or equitable, including injunctive, remedies under any other provisions of this Agreement), and (d) such Restricted Party hereby waives the claim or defense that an adequate remedy at law exists for such a breach.

**2.7 Equitable Tolling.** If Restricted Party breaches any covenant in this Article II, then the duration of such covenant will be tolled with respect to Restricted Party for a period of time equal to the time of such breach and, if Purchaser seeks injunctive relief or other remedies for any such breach, then the duration of such covenant will be tolled with respect to Restricted Party for a period of time equal to the pendency of such proceedings (including all appeals).

**2.8 Indemnification.** Restricted Party will, and will require its Affiliates to, indemnify Purchaser or any of its Affiliates and their respective owners, members, directors, limited liability company managers, officers, employees, Affiliates and representatives from and against any and all Actions, Liabilities, damages, losses, settlements, costs and expenses (including reasonable attorneys' and experts' fees, and court costs and costs of enforcing this right of indemnification) arising from or related to any breach by Restricted Party of any provision of this Agreement.

### **ARTICLE III RESTRICTED PARTY REPRESENTATIONS AND WARRANTIES**

Restricted Party represents and warrants, on behalf of it and its Affiliates, to Purchaser that:

**3.1 Power and Authority.** Restricted Party is a limited liability company with an address set forth in the preamble to this Agreement. Restricted Party has full power, authority and legal capacity to execute, deliver and perform this Agreement on behalf of it and its Affiliates.

**3.2 Enforceability.** This Agreement has been duly executed and delivered by Restricted Party and constitutes a valid and legally binding obligation of Restricted Party, enforceable against Restricted Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium and similar generally applicable Laws regarding creditors' rights or by general equity principles.

**3.3 Consents.** No Approval or Order of, or filing or registration with, any Governmental Authority or other Person is required for Restricted Party's execution, delivery and performance of this Agreement.

**3.4 No Conflicts.** Neither Restricted Party's execution and delivery of this Agreement nor Restricted Party's performance under this Agreement will conflict with or result in a breach of any provision of any Law or Order to which Restricted Party is party or by which Restricted Party is bound. Restricted Party is not a party to or bound by any Contract under which (a) Restricted Party's execution and delivery of or performance under this Agreement will constitute a default, breach or event of acceleration, or (b) performance by Restricted Party according to the terms of this Agreement may be prohibited, prevented or delayed.

#### **ARTICLE IV DEFINED TERMS**

**4.1 Definitions.** For purposes of this Agreement, the following terms have the meanings set forth below. Capitalized terms not defined below or otherwise defined herein are defined in the Purchase Agreement.

“Action” means any claim, action, arbitration, complaint, charge, demand, grievance, hearing, petition, investigation, suit or other proceeding, whether civil or criminal, in law or in equity, by or before any arbitrator or Governmental Authority.

“Affiliate” means, with respect to a particular Person, (i) any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, (ii) if such Person is a partnership, any partner thereof, (iii) any predecessor of any of the foregoing, and (iv) any trust for the primary benefit of such Person or any of the foregoing. The term “control” means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of another Person, whether through Ownership of voting securities or equity interests, by Contract or otherwise. With respect to Restricted Party, “Affiliate” does not include the Business upon consummation of the transactions contemplated by the Purchase Agreement.

“Agreement” is defined in the preamble to this Agreement.

“Approval” means any approval, authorization, consent, permit, certification, license, Order, accreditation, certification, qualification or registration, or any extension, modification, amendment or waiver of any of the foregoing, required to be obtained from, filed with or delivered to, any Governmental Authority or other Person.

“Business” means the business of owning and operating intermodal equipment and logistics services, including container and chassis repair and storage, businesses.

“Business Associate” is defined in Section 2.3(a).

“Business Day” means a day that is not a Saturday, Sunday or legal holiday on which banks are authorized or required to be closed in New York, New York.

“Competing Business” means any business enterprise or service or product offering, in existence or under development, that competes with, or that is intended to compete with or displace in the market, the Business as conducted by Purchaser or any of the services or products provided, leased, licensed or sold by Purchaser.

“Confidential Information” means all confidential, proprietary and trade secret information (including all tangible and intangible embodiments thereof) that concerns Purchaser or the Business, the services, processes and products offered by Purchaser, the customers of Purchaser, the relationships among Purchaser and its Affiliates, and the research and development efforts and products of Purchaser, including lists of and information regarding current and prospective customers, vendors and suppliers of Purchaser, personnel information (including the identity of former, current and prospective employees, independent contractors and other Business Associates of Purchaser and the responsibilities, competence, abilities and compensation of such Persons), computer programs, unpatented inventions, discoveries or improvements, marketing, manufacturing, or organizational research and development, Contracts and contractual relations, licenses, accounting ledgers and financial statements, business plans, forecasts and projections, business methods, pricing and financial information, information concerning planned or pending acquisitions or divestitures, and information concerning purchases of real property or major equipment or other personal property, and any other information or data that Purchaser treats as proprietary or designates as confidential information, whether or not owned or developed by Purchaser; provided, however, that “Confidential Information” does not include any information that has been made generally available to the public (other than through a Restricted Party’s breach of this Agreement or by a third-party’s breach of a confidentiality covenant).

“Contract” means any agreement, contract, indenture, obligation, promise, arrangement, commitment or undertaking (whether written or oral and whether express or implied) that is legally binding.

“GAAP” means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any federal, state, provincial, local or other government or governmental, regulatory or administrative authority, agency, bureau, board, department, political subdivision or commission or any court, tribunal or judicial or arbitral body, in each case, whether domestic, foreign or supranational.

“Law” means any federal, state, local, municipal, foreign, international, multinational, supranational or other constitution, statute, law, rule, regulation, ordinance, code, principle of common law or treaty.

“Liability” means any obligation or liability (direct or indirect, matured or unmatured, absolute, accrued, contingent or otherwise), whether or not required by GAAP to be provided or reserved against on a balance sheet.

“Order” means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Authority or arbitrator.

“Parties” is defined in the preamble to this Agreement.

“Person” means any natural individual, corporation, partnership, limited liability company, joint venture, association, bank, trust company, trust, organization or other entity, whether or not legal entities, or any Governmental Authority, including any agency or political subdivision.

“Purchaser” is defined in the preamble to this Agreement.

“Purchase Agreement” is defined in Recital A to this Agreement.

“Restricted Party” is defined in the preamble to this Agreement.

“Restricted Period” means (i) the period from the date of this Agreement until the fifth (5th) anniversary of the date of this Agreement, or (ii) if five (5) years after the date of this Agreement is deemed an unreasonable length of time by a court of competent jurisdiction, then the fourth (4th) anniversary of the date of this Agreement, or (iii) if four (4) years after the date of this Agreement is deemed an unreasonable length, then the third anniversary of the date of this Agreement, or (iv) otherwise the longest time period after the date of this Agreement up to the fifth (5th) anniversary date of this Agreement that is permitted by applicable Law.

“Restricted Territory” means the areas (i) within a radius of 50 miles from Dallas, Texas; or (ii) if a radius of 50 miles is deemed an unreasonable territory by a court of competent jurisdiction, then a radius of 25; or (iii) if a radius of 25 miles is deemed an unreasonable territory by a court of competent jurisdiction, then a radius of 10; or (iv) if a radius of 10 miles is deemed an unreasonable territory by a court of competent jurisdiction, then the largest area that is permitted by applicable Law.

## **ARTICLE V GENERAL PROVISIONS**

**5.1 Notices.** All notices and other communications required or permitted under this Agreement (a) must be in writing, (b) will be duly given (i) when delivered personally to the recipient, (ii) one (1) Business Day after being sent to the recipient by nationally recognized overnight private carrier (charges prepaid), or (iii) four (4) Business Days after being mailed to the recipient by certified or registered mail (postage prepaid and return receipt requested), and (c) addressed as follows (as applicable):

If to Restricted Party:

With a copy (not constituting notice) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Purchaser:

With copies (not constituting notice) to:

Rally Intermodal Logistics, L.L.C.  
1515 East Barbour's Cut Blvd.  
Suite 146  
LaPorte, TX 77571

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other respective address as each Party may designate by notice given in accordance with this Section 5.1.

**5.2 Amendments.** The Parties may amend this Agreement only pursuant to a written agreement executed by Purchaser and Restricted Party.

**5.3 Non-Waiver.** The Parties' respective rights and remedies under this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver will be effective unless it is in writing and signed by an authorized representative of the waiving Party. No waiver given will be applicable except in the specific instance for which it was given. No notice to or demand on a Party will constitute a waiver of any obligation of such Party or the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

**5.4 Assignment.** Restricted Party may not assign this Agreement or any rights under this Agreement, or delegate any duties under this Agreement, without Purchaser's prior written consent.

**5.5 Binding Effect; Benefit.** This Agreement will inure to the benefit of and bind the Parties and their respective successors and permitted assigns. The provisions of this Agreement are expressly intended to benefit and be enforceable by Purchaser and its Affiliates.

**5.6 Severability.** If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. If any court of competent jurisdiction holds the geographic or temporal scope of any restrictive



covenant in Article II invalid or unenforceable, then such restrictive covenant will be construed as a series of parallel restrictive covenants and the geographic or temporal scope of each such restrictive covenant will be deemed modified (including by application of any “blue pencil” doctrine under applicable Law) to the minimum extent necessary to render such restrictive covenant valid and enforceable.

**5.7 References.** The headings of Sections are provided for convenience only and will not affect the construction or interpretation of this Agreement. Unless otherwise provided, references to “Section(s)” refer to the corresponding section(s) of this Agreement. Reference to a statute refers to the statute, any amendments or successor legislation and all rules and regulations promulgated under or implementing the statute, as in effect at the relevant time. Reference to a contract, instrument or other document as of a given date means the contract, instrument or other document as amended, supplemented and modified from time to time through such date.

**5.8 Construction.** Each Party participated in the negotiation and drafting of this Agreement, assisted by such legal counsel as it desired, and contributed to its revisions. Any ambiguities with respect to any provision of this Agreement will be construed fairly as to all Parties and not in favor of or against any Party. All pronouns and any variation thereof will be construed to refer to such gender and number as the identity of the subject may require. The terms “include” and “including” indicate examples of a predicate word or clause and not a limitation on that word or clause. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “or” is not exclusive. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase will not mean simply “if.” The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Any Contract defined or referred to herein or in any agreement or instrument that is referred to herein means such Contract as from time to time amended, modified or supplemented. References in a Contract to “Article,” “Section” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such Contract. References to a Person are also to its successors and permitted assigns in the case of an entity and his or her heirs and legal representatives in the case of a natural individual.

**5.9 Governing Law.** THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

**5.10 Consent to Jurisdiction.** Each Party hereby (a) agrees to the exclusive jurisdiction of the courts in Dallas County of the state of Texas and the United States District Court for the Northern District of Texas, with respect to any Action, claim or cause of action arising under or relating to this Agreement, (b) waives any objection based on forum non conveniens and waives any objection to venue of any such Action, (c) waives personal service of any and process upon it, and (d) consents that all services of process be made by registered or certified mail (postage prepaid, return receipt requested) directed to it at its address stated in Section 5.1 and service so made will be complete when received. Nothing in this Section 5.10 will affect the rights of the Parties to serve legal process in any other manner permitted by law.

**5.11 Waiver of Trial by Jury.** EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN CONNECTION WITH ANY MATTER RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 5.11.

**5.12 Further Assurances.** Each of the Parties agrees to execute and deliver, upon the written request of any Party hereto, any and all such further instruments and documents as reasonably appropriate for the purpose of obtaining the full benefits of this Agreement.

**5.13 Counterparts.** The Parties may execute this Agreement in multiple counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same agreement. The Parties may deliver executed signature pages to this Agreement by facsimile or email transmission. No Party may raise as a defense to the formation or enforceability of this Agreement, and each Party forever waives any such defense, either (a) the use of a facsimile or email transmission to deliver a signature or (b) the fact that any signature was signed and subsequently transmitted by facsimile or email transmission.

*[Signature page follows]*

The Parties execute this Restrictive Covenant Agreement as of the date first above written.

\_\_\_\_\_

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

RALLY INTERMODAL LOGISTICS, L.L.C.

By: \_\_\_\_\_  
Name: Norman Lamb  
Title: Manager

**Schedule 2.1**

**AMOUNTS DUE UNDER ASSIGNED CONTRACTS**

The following is a list of any and all amounts due under Seller's Assigned Contracts:

(a) None.

**Schedule 6.2**

**FOREIGN QUALIFICATION JURISDICTIONS**

The Seller is duly qualified as a foreign corporation in the following jurisdictions:

- (a) None.

**Schedule 6.6**

**LITIGATION**

List of any Claim or Action, either pending or threatened, relating to or affecting the Business or the Acquired Assets or the transactions:

*Moody National Bank v. Intermodal Equipment Logistics, et al.*, Adversary No. 16-3274, Bankruptcy Court, Southern District Of Texas, Houston Division.

**Schedule 6.8**

**LICENSES**

List of Licenses:

(a) None.

**Schedule 6.11****SELLER EMPLOYEES****IEL Employees - Dallas**

Employee	Hourly Rate	Salary	Production Pay	Position
Perouty, Kyle J.		\$93,247.40		Director
Carroll, Arvel W		\$65,000		Dallas Manager
Dodson, Freida C	\$ 15.00			Ops Coordinator
Phillips, Travon			\$ 14.00	Mechanic
Richardson, Dominique	\$ 12.00			Mechanic
Morales, Alfonso			\$ 13.50	Mechanic
Robbins, Jeromy			\$ 13.50	Mechanic
Truesdale Jr, Billy R			\$ 13.50	Mechanic

**IEL Employees - Corporate**

Employee	Hourly Rate	Salary	Production Pay	Position
Kudrytska, Natalya		\$ 50,000.00		Accountant - Remote *
Perouty, James W.		\$ 150,000.00		President & CEO
Smith, Kelly A	\$ 15.00			Billing Clerk - Remote *

\*Houston Management and Mechanics have been excluded



**Schedule 6.14**

**INDEBTEDNESS**

List of Indebtedness:

(a) General Trade and vendor Debt (unsecured)

(b) Debt with any potential impact on Asset Purchase:

Local personal property taxes

Moody National Bank – Approx. \$750,000.00 (principal) secured by the assets if  
Intermodal

1 Vehicles / Welders / Compressors											
No.	Year	Make	Model	Vin Number	Cmts	Welder	Welder SN	Comp Pump	Comp Pump SN	Comp Eng	Comp Eng SN
1	1998	Ford	Ranger	1FTYR14U8WPA85245	PARTS RUNNER TRK	N/A	N/A	N/A	N/A	N/A	N/A
2	1999	Chevy	Stake Body Trk	J9BE4B141X7901281	At Storage lot	N/A	N/A	N/A	N/A	N/A	N/A
3	1999	Ford	F-250 F/B	1FTNF21FOXEE66057	Diagnostic work / diesel	N/A	N/A	N/A	N/A	N/A	N/A
4	2001	Dodge	2500 F/B	3B7KC26Z21M266751	Currently in Use	Miller Blue Star DX185	NA	Champion	D116676	Honda GX390 / Gas	GCBCT - 1535261
5	2003	Ford	F-250 U/B	1FTX20L83EB05559	Currently in Use	Lincoln Ranger 8	U1020920920963	FS Curtis	SF212692	Honda GX390 / Gas	GCBCT - 1445370
6	2004	Dodge	RAM 3500 U/B	3D7MA46C14G133297	Needs Engine / diesel	Miller Blue Star 3500	LE233384	FS Curtis	SF207033	Honda GX390 / Gas	GCBCT - 1366406
7	2004	Ford	F-250 F/B	1FTNF20L34EB97054	At Storage lot	N/A	N/A	N/A	N/A	N/A	N/A
8	2004	Ford	F 350 U/B	1FTSX30LX4EE07557	Needs Fuel Pump	Miller Blue Star 145	3635200215	FS Curtis	SF206799	Koller Command Pro 14	4211620098
9	2006	Ford	F 350 U/B	1FDWF34526EC35054	Currently in Use	Miller Blue Star 145	NA	Champion	556097	Honda GX390 / Gas	GCBCT - 1928367
10	2006	Ford	F 350 U/B	1FDWF34Y56EC35253	Currently in Use	Miller Blue Star 145	3434500425	FS Curtis	SR203700	Honda GX390 / Gas	GCBET - 1016147
11	2006	Chevy	1500 P/U	3GCEC14X06G187898	Inspector Truck	N/A	N/A	North Star	NA	Honda GX160 / Gas	CNFDG10D54120002
12	2007	Ford	F-250 U/B	1FDNF20587EB52242	Currently in Use	Miller Blue Star 145	3601600315	FS Curtis	SF207034	Honda GX390 / Gas	GCBCT - 1366409
13	2007	Chevy	3500 P/U	1GCHC24K67E511789	MANAGER TRUCK	N/A	N/A	N/A	N/A	N/A	N/A
14	2008	GMC	Savana 3500 B/V	1GDJF31K081907690	Currently in Use	Miller Bobcat 250NT	NA	Champion	D108755	Honda GX390 / Gas	GCBCT - 1445374
15	2008	Ford	E-3500 B/V	1FDWE35L08DA76009	Currently in Use	Hobart Champ 1435	NA	FS Curtis	SF203701	Honda GX390 / Gas	GCBCT - 1366391
16	2010	Ford	F-250 P/U	1FTNF2A54AEA72317	MANAGER TRUCK	N/A	N/A	N/A	N/A	N/A	N/A
17	X	X	X	X	At Storage lot	X	X	FS Curtis	NA	Honda GX390 / Gas	NA
18	X	X	X	X	At Storage lot	X	X	FS Curtis	NA	Honda GX390 / Gas	NA
19	2010	Ford	F-150 P/U	1FTMF1CW6AKB45913	95 gallon tank 147K miles	N/A	N/A	N/A	N/A	N/A	N/A

2 Shop Equipment - DIT

NO.	Terminal	Location	Description	Brand / Model	Vin #	Quantity
1	DIT	Roadability	Electric Compressor	Ingersol Rand / 3 Phase	602140058	1
2	DIT	SHOP	Suitcase Mig Welder	Lincoln	na	1
3	DIT	SHOP	15,500 lb capacity Forklift	2000 Toyota / 5FD70	12852	1
4	HOU	SHOP	Champion Compressor 25HP	Champion	na	1

## 3 IEL DIT Tool Inventory Count

## Terminal: DIT

No.	Tool Description	Location MSU # / Roadability	Comments	Amt
1	HF Earthquake 1" Impacts	RA / Shop		5
2	HF 20 Ton Air/Hydraulic Jacks	RA / Shop		5
3	Recappers 20 Ton Air/Hydraulic Jacks	RA / Shop		3
4	Tire Iron Bars	RA / Shop / MSU's		16
5	Tire Chairs - 2 Piece Stand	RA / Shop / MSU's		3
6	CP 3/16" Air Rivet Gun	RA / Shop / MSU's		8
7	Tire Hammers - Complete	RA / Shop / MSU's		7
8	Tire Hammer Handles	Storage Container	New	4
9	1 1/4" 1" Drive Sockets	RA / Shop / MSU's	2 New	7
10	33mm 1" Drive Sockets	RA / Shop / MSU's		3
11	Misc 1" Drive Suspension Sockets	RA / Shop		7
12	Master Tire Gauge	Manger Truck	Dill Air Control Products	1
13	Fastenal Brand 1/4" Hand Riveter	Manger Truck	Like New	1
14	Torch Hose Repair Kits	Managers Trucks		4
15	22 Ton Rolling Air / Hydraulic Jack	RA	Needs Repairs	1
16	HF Earthquake 1" Impacts	Storage Container	Needs Repairs - Swap for W/R	4
17	Recappers 20 Ton Air/Hydraulic Jacks	Storage Container	Needs Repairs	4
18	6 Ton Jack Stands (adjustable)	Shop Area		7
19	12 Ton Jack Stands (adjustable)	Shop Area		2
20	High Height 5th Wheel Stands - Red	Shop Area		4
21	High Height 5th Wheel Stands - Yellow	Shop Area		2
22	Wheel End Axle Nut Sockets	Parts room	Various Sizes	7
23	3/4" x 7" Anvel	Parts room		1
24	3/4" - 1/2" Socket Adapter	Parts room		1
25	Wheel Seal Removal Tool	Parts room		1
26	Wright 600 Ft. Lb. Torque Wrench	Parts room		2
27	Wright 250 Ft. Lb. Torque Wrench	Parts room		1
28	Wright 125 Ft. Lb. Torque Wrench	Parts room		1
29	Wheel End Race Installation Tool	Parts room		1
30	Cheetah Tubeless Tire Bead Seater	RA		1
31	Wheel End Dolly	Parts room		1
32	Push Brooms	Parts room / RA		4
33	Small Brooms	Parts room / RA		3
34	Metal Dust Pans	Parts room / RA		2
35	Metal Snow Shovel	Parts room / RA		1
36	Cones	Shop / RA / MSU's		50
37	20 Foot 5/8" Chanins w/ hooks	Manager Truck / Shop		2
38	20 Ton Bottle Jack	Storage Container		1
39	48" Industrial Shop Fans	Shop / Storage Cont		2
40	Napa Battery Charger / Starter	Storage Container	Model 85-1500	1
41	Electric Compressor Motor	Storage Container	IR - Model 0602140058	1
42	3 Ton Chain Hoist	Storage Container		1
43	Medium Duty Torch Heads	Storage Container		4
44	Medium Duty Torch Base	Storage Container		2
45	Heavy Duty Torch Heads	Storage Container		2
46	Medium Duty Rose Bud	Storage Container		1
47	Heavy Duty Rose Bud	Storage Container		1
48	First Aid Kits	MSU / RA / Shop / Storage	Current and unopened	20
		<b>Location</b>		
No.	Tool Description	MSU # / RODO	Comments	Amt
49	Torch sets (Torch/Gauges/Hose)	MSU / Storage		8
50	Small Flamable Fire Cabinets	MSU's		8
51	Medium Flamable Fire Cabinets	RA / Storage Cont		2
52	Large Flamable Fire Cabinet	Shop Area	5 Gallon Gasoline Storage	1
53	Extra Large Flamable Fire Cabinet	Parts room		2
54	Welding Leads - Pair (60/75ft)	MSU's		8
55	Blackhawk Port-A-Power	Parts room		1
56	3 Ton Come Along	SN 386163		1
57	Betts Remote Trailer Testers	Shop Area	Model 940485	2
58	98 Gallon Fuel Tanks w/ pumps & hoses	Manger Trucks		3
59	5 Lb Fire Extinguishers - Serviced / Charged	MSU's / RA / Storage	Serviced 1/18/17	22
60	10 Lb Fire Extinguishers - Serviced / Charged	MSU's / RA / Storage	Serviced 1/18/17	21
61	4 gauge HD Jumper Cables	Manger Trucks		2
62	Diesel Heater - 85,000 BTU	Shop Area		1
63	* Miscellaneous Tools / Auto Parts & Items			1
<b>63</b>	<b>Tool Totals</b>	<b>MSU/RA/SHOP</b>		

\* Miscellaneous Tools / Items - consist of all required signage, mechanics breakroom, tables, desks, chairs, shelving, and tools not mention in above listing.

**4 DIT Buildings**

No.	Quantity	Description	Location	Comments
1	1	Custom Roadability Station	DIT	Roadability Tools, Compressor, Parts Store
2	2	40' Hi-Cube Containers	DIT	Tire Storage Containers / Lighting Equiped
3	1	40' Hi-Cube Container	DIT	Parts / Equipment Storage / shelving
4	2	40' Hi-Cube Containers	ENG	Custom Access Doors w/ shelving / Lighting Equiped

1. Roadability Station houses the RODO compressor, Roadability tools, and the Rodo parts Storage
2. 40' High Cube Tire Storage Containers - Equiped with Lighting and power outlets
3. 40' High Cube Part Storage Container - Equiped with Power, shelving. Storage container
4. Customized 40' Hi-Cube containers for Parts and Tire Storage. Parts containers equiped with shelving & bins for parts.

5 IT

No.	Quantity	Description	Location	Comments
1	1	Desktop Computer	DIT Office	M&R Coordinator Computer
2	1	Laptop HP - 19"	Manager Truck	Kyle Perouty Laptop
3	1	Laptop Toshiba- 19"	Manager Truck	Arvel carroll Laptop
4	4	20" Flat Screen Monitors	DIT Office	KJP Office / M&R Coordinator Office
5	1	Biometric Hand scanner	DIT Breakroom	
6	1	Plus Tek PS283	DIT Office	
7	1	Samsung 10" Tablet	KJP Office	Internet Access Tablet
8	1	Misc Equipment / Office Supplies	DIT Office	

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
INTERMODAL EQUIPMENT	§	CASE NO. 14-33371-H5-11
LOGISTICS, LLC	§	
Debtor	§	Chapter 11
	§	
	§	
MOODY NATIONAL BANK	§	
Plaintiff	§	
	§	
vs.	§	ADVERSARY NO. 16-03274
	§	
INTERMODAL EQUIPMENT	§	
LOGISTICS, LLC and	§	
JAMES W. PEROUTY	§	
Defendants.	§	

**SETTLEMENT AGREEMENT**

Moody National Bank (MNB), Intermodal Equipment Logistics, LLC (Intermodal) and James W. (“Jim”) Perouty (Perouty) (collectively “Parties”) agree to settle all claims and controversies in connection with Adversary Proceeding No. 16-03274 (the “Adversary Proceeding”) according to the following terms:

**RECITALS**

WHEREAS, MNB made two (2) loans to Intermodal; one in the original principal amount of \$316,250.00 and one in the original principal amount of \$750,000.00 (collectively, “the Loans”);

WHEREAS, Intermodal signed and delivered pledges and security agreements that pledged certain Intermodal assets as collateral for the Loans;

WHEREAS, Perouty signed Guaranty Agreements in connection with the Loans whereby he guaranteed payment of the Loans;

WHEREAS, Intermodal filed Chapter 11 Bankruptcy on June 16, 2014;

WHEREAS, on April 11, 2016, the United States Bankruptcy Court for the Southern

District of Texas, Houston Division entered an Order Confirming Intermodal's Amended Plan of Reorganization, (the Order);

WHEREAS, the Order converted MNB's claims against Intermodal into three (3) Class 2 claims: (1) the LOC claim; (2) the General Claim; and (3) the Attorneys Fee Claim;

WHEREAS, on November 14, 2016 MNB filed a lawsuit in Texas State Court against Intermodal and Perouty (the Lawsuit), alleging that Intermodal defaulted on its obligations with respect to the LOC claim;

WHEREAS, Intermodal removed the Lawsuit to the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the Adversary Proceeding);

WHEREAS, the Parties desire to compromise and settle all claims and causes of action of any nature whatsoever in connection with the claims made in the Adversary Proceeding;

WHEREAS, Intermodal has entered into an Asset Purchase Agreement (Asset Purchase Agreement) with Rally Intermodal, LLC (Rally), whereby Rally agrees to purchase certain assets of Intermodal for \$186,000.00 (Asset Purchase Price), which assets are subject to the pledges and security agreements in favor of MNB and signed by Intermodal in connection with the Loans;

NOW, THEREFORE, it is agreed:

1. Payment to MNB by Intermodal. No later than May 15, 2017, \$171,000.00 of the Asset Purchase Price shall be paid to MNB as follows:

- a. The Asset Purchase Agreement shall provide that Rally shall pay \$171,000.00 directly to MNB MNB shall provide Rally with wiring instructions in writing upon written request. If such payment will be made by check, such check shall be a cashier's check and made payable to Moody National Bank.
- b. Fifteen thousanddollars (\$15,000.00) of the Asset Purchase Price shall be paid to Walker & Patterson.

2. Accounts Receivable. Intermodal shall continue collect all accounts receivable on behalf of MNB and immediately remit all payments received to MNB. Intermodal shall not discount any accounts receivable without prior written consent of MNB. Upon written demand, Intermodal shall transfer and/or assign all accounts receivable to MNB and execute any necessary documents to effect such transfer and/or assignment as may be requested by MNB. With written permission from MNB, Intermodel may retain funds from Accounts Receivable to pay for administrative costs.

3. Excluded Assets. Intermodal acknowledges that certain of its assets are not being sold to Rally in the Asset Purchase Agreement. Intermodal shall have until May 31, 2017 to sell such assets and immediately deliver the proceeds of such sale(s) to MNB. Any sale pursuant to this Paragraph must be approved by MNB in writing. If Intermodal does not sell such equipment within the time provided in this Paragraph, MNB shall be entitled to immediately enter any premises where such property is located without any interference by Intermodal and take possession of such equipment without further notice to Intermodal or court intervention. Intermodal and/or Perouty shall provide any assistance and/or consent for MNB to enter such premises.

4. Payment to MNB by Perouty. Perouty agrees to pay MNB \$24,000.00 as follows:

- a. Quarterly payments of \$1,500.00 commencing June 1, 2017, and thereafter on each and every September 1, December 1, March 1 and June 1 thereafter until paid in full on or before June 1, 2021.

5. Release. In consideration of the payments herein, the mutual promises and covenants contained in this release, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, MNB releases Intermodal, Intermodal's shareholders, officers, directors, agents, employees, successors, attorneys and assigns, and Perouty and his wife, Mattie Perouty, from any and all claims, awards, costs, sanctions, demands or causes of action, known or unknown, in equity or at law, arising out of or in connection with the Adversary Proceeding or otherwise. The release of Perouty will be effective only upon the completion of payments as provided herein.

6. Dismissal. Within 14 days of receiving the payment provided in Paragraph 1a. of this Agreement, MNB agrees to dismiss the Adversary Proceeding.

7. No Liability. No liability is admitted by any Party.

8. Entire Consideration. The Parties acknowledge that this Agreement provides sufficient consideration for any and all rights, duties, or obligations created by the Agreement. The Parties further acknowledge that they have made no agreement or promise to do or omit to do any act or thing not set forth in this Agreement, and understand that this Agreement is made as a compromise to avoid the expenses and the uncertainties of litigation, to terminate all controversies and to finally resolve claims or injuries, damages, costs, or losses of whatever nature, whether arising by statute, in tort, contract, or otherwise known or unknown, including future developments, growing out of or connected with the particular facts, incidents, transactions, omissions and occurrences relating to the Claims and/or the Lawsuit.



9. Representations and Warranties. The Parties expressly warrant and represent that:

a. Each person executing this Agreement is legally competent to execute this Agreement on behalf of the respectively named party, and bind such Party hereto.

b. The parties have had the benefit of professional advice from attorneys of their own choosing, is fully satisfied with that advice, have relied solely and completely upon their own judgment together with the independent professional advice, and are expressly not relying on any statement, promise or representation of the other Party, or any agent of the other Party, in making the decision to settle these matters and enter into this Agreement;

c. With the benefit of such professional advice, the parties have fully informed themselves of the contents, conditions and effects of this Agreement, have read and understood this document and have had its contents fully disclosed and explained by their own attorneys, and understand the same;

d. No promise, representation, express or implied warranty, or agreement of any kind has been expressed or implied by either Party or by anyone acting for them, except as expressly stated in this Agreement, and it is understood that the terms of the Agreement are contractual and not mere recitals, and

e. In entering into this Agreement, no Party has been induced by any facts, representations, promises, or terms, whether known or unknown, disclosed or undisclosed, except for those contained in this Agreement.

f. Intermodal represents and warranties that there are no side agreements, employment agreements, consulting agreements and/or other agreements between Intermodal and Rally.

g. Perouty represents and warranties that there are no side agreements, employment agreements, consulting agreements and/or other agreements between Perouty and Rally.

10. Successors. This agreement shall be binding on the Parties, their successors and assigns.

11. Counterparts. This Agreement may be executed in any number of counterparts, and all such counterparts together shall constitute one and the same instrument. Counterparts delivered by facsimile or other electronic means to the party entitled thereto shall have the same effectiveness as ink-signed originals.

12. Entire Agreement. This Agreement constitutes the entire agreement among the Parties and fully supersedes any prior understandings, representations, warranties and agreements, whether consistent or inconsistent with the terms hereof.

13. Enforcement of Settlement Agreement. The release granted herein shall be a complete defense to any claim, demand, and causes of action, right, lawsuit or proceeding of any kind or character that is referred to in or subject to terms of this Agreement.

14. Governing Law. This agreement shall be construed in accordance with the laws of the State of Texas.

**MOODY NATIONAL BANK**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

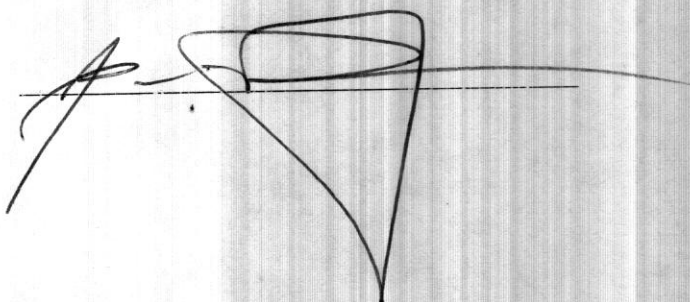
**INTERMODAL EQUIPMENT LOGISTICS, LLC**

By:  \_\_\_\_\_

Dated: 5/4/2017

Its: President + CEO

**JAMES W. PEROUTY**

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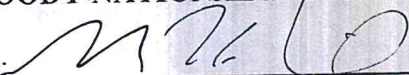
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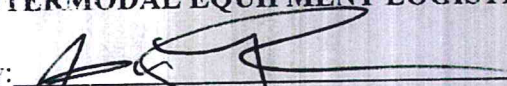
**MOODY NATIONAL BANK**

By: 

Dated: 5/5/2017

Its: EVP, CCO

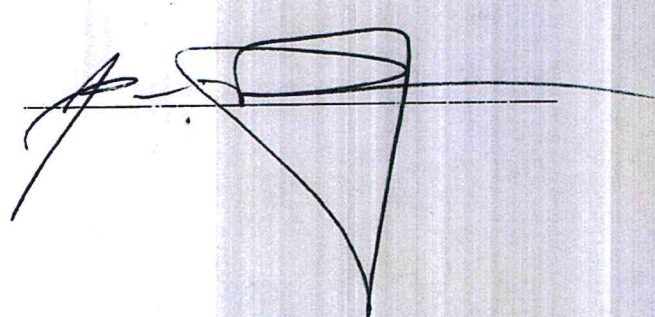
**INTERMODAL EQUIPMENT LOGISTICS, LLC**

By: 

Dated: 5/4/2017

Its: President + CEO

**JAMES W. PEROUTY**



Dated: 5/4/2017