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August 28, 2023
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36720

MACQUARIE INFRASTRUCTURE PARTNERS V GP, LLC, ET AL.
—CONTROL EXEMPTION—
PIONEER VALLEY RAILROAD COMPANY, INC.

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

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FILED
August 28, 2023
SURFACE
TRANSPORTATION BOARD

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MIP V, MIP V Rail, LLC, and Gulf & Atlantic Railways, LLC*

Dated August 28, 2023

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

Macquarie Infrastructure Partners V GP, LLC (“MIP GP”) submits this Verified Notice of Exemption (“Verified Notice”) pursuant to 49 C.F.R. § 1180.2(d)(2) for the benefit of the Macquarie Infrastructure Partners V fund vehicle (“MIP V”), MIP V Rail, LLC (“MIP Rail”), and Gulf & Atlantic Railways, LLC (“G&A”), all non-carriers, to acquire control of Pioneer Valley Railroad Company, Inc. (“PVRR”), a Class III common carrier freight railroad. PVRR is currently controlled by Pinsly Railroad Company (“Pinsly”), a non-carrier.

Pursuant to an Agreement dated as of August 19, 2023 (the “Purchase Agreement”), G&A has agreed to acquire from Pinsly 100% of the equity interests of PVRR (the “Transaction”).¹ G&A currently controls five rail common carriers,

¹ As part of the Transaction, G&A will also acquire from Pinsly 100% of the equity interests of Railroad Distribution Services, Inc., a non-carrier.

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Grenada Railroad, LLC (“GRYR”),² Florida Gulf & Atlantic Railroad, LLC (“FG&A”),³ Camp Chase Rail, LLC (“Camp Chase”),⁴ Chesapeake and Indiana Railroad, LLC (“CKIN”),⁵ and Vermilion Valley Railroad Company LLC (“VVRC”).⁶

As explained below, PVRR does not connect with any of the railroads (GRYR, FG&A, Camp Chase, CKIN, and VVRC) that would be in the same corporate family following the Transaction; the Transaction is not part of a series of anticipated transactions that would connect PVRR to any of those railroads; and the Transaction does not involve a Class I carrier. Accordingly, the Transaction is exempt under the Board’s regulations at 49 C.F.R. § 1180.2(d)(2).

The information required by 49 C.F.R. § 1180.4(g) is set out below.

² See *Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada R.R. and Fla., Gulf & Atl. R.R.*, Docket No. FD 36566 (STB served Dec. 10, 2021 and Apr. 7, 2022).

³ *Id.*

⁴ See *Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Camp Chase Rail, LLC, Chesapeake & Ind. R.R., & Vermilion Valley R.R.*, Docket No. FD 36685 (STB served Apr. 7, 2023).

⁵ *Id.* CKIN was formerly known as Chesapeake and Indiana Railroad Company, Inc.

⁶ *Id.* VVRC was formerly known as Vermilion Valley Railroad Company.

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1180.6(a)(1)(i) A description of the proposed transaction, including . . . a brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

On August 19, 2023, G&A entered into a Purchase Agreement with Pinsly pursuant to which G&A will acquire 100% of the equity interests of PVRR.⁷ Upon consummation of the Transaction, G&A (directly) and MIP GP, MIP V, and MIP Rail (each indirectly) will control PVRR as well as GRYR, FG&A, Camp Chase, CKIN, and VVRC.⁸

PVRR operates approximately 27 miles of track, including 18 mainline miles, in Massachusetts. One of PVRR's lines runs north from Westfield, MA towards Southamptn, MA. The other line runs northeast from Westfield, MA to Holyoke, MA.

GRYR owns and operates a 228-mile rail line in Mississippi.⁹ FG&A owns and operates 430 miles of track (including 373 main line miles) in Florida and

⁷ Immediately prior to closing of the Transaction, PVRR, a Nevada corporation, will be converted to a Nevada limited liability company. G&A will then acquire 100% of the equity interests of the limited liability company.

⁸ Because G&A is wholly owned by MIP Rail, which is (indirectly) controlled by MIP GP, MIP GP may be deemed to (indirectly) control PVRR, as well as GRYR, FG&A, Camp Chase, CKIN, and VVRC, for purposes of 49 U.S.C. § 11323 following consummation of the Transaction.

⁹ See *Grenada R.R.—Acquisition & Operation Exemption—N. Cent. Miss. Reg'l R.R. Auth. & Grenada Ry.*, Docket No. FD 36700 (STB served May 25, 2023).

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Georgia.¹⁰ Camp Chase operates approximately 14 miles of track in Ohio.¹¹ CKIN operates approximately 28 miles of track in northwestern Indiana.¹² VVRC operates approximately 8.4 miles of track (including approximately 7.81 main line miles) in east-central Illinois and west-central Indiana.¹³ Each of these railroads is a Class III carrier.

G&A, a Delaware limited liability company, is wholly owned by MIP Rail. MIP Rail, a Delaware limited liability company, is wholly owned (indirectly) by MIP V. MIP V is controlled by MIP GP, a Delaware limited liability company.

As the foregoing description of PVRR's rail lines demonstrates, PVRR does not connect with the lines of GRYR, FG&A, Camp Chase, CKIN, or VVRC. Indeed, none of the other railroads in the G&A corporate family operate in the state of Massachusetts, where PVRR's lines are located. Furthermore, the Transaction is not part of a series of anticipated transactions that would connect PVRR with any rail carrier owned or controlled by G&A, MIP GP, MIP V, MIP Rail or any of their respective affiliates. Finally, neither PVRR nor any of the railroads currently

¹⁰ See *RailUSA, LLC and American Rail Partners, LLC—Continuance in Control Exemption—Florida Gulf & Atlantic R.R., LLC*, Docket No. FD 36248 (STB served Dec. 21, 2018).

¹¹ See *Camp Chase Rail, LLC—Acquisition & Operation Exemption—Camp Chase Ry.*, Docket No. FD 36414 (STB served July 1, 2020).

¹² See *Chesapeake & Ind. R.R.—Lease & Operation Exemption—N. Ind. R.R.*, Docket No. FD 36702 (STB served May 26, 2023).

¹³ See *Vermilion Valley R.R.—Operation Exemption—FNG Logistics Co.*, Docket No. FD 34340 (STB served May 16, 2003); *Vermilion Valley R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, Docket No. FD 36350 (STB served Oct. 18, 2019).

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controlled by G&A is a Class I carrier. Accordingly, this Transaction falls within the class of transactions described at 49 C.F.R. § 1180.2(d)(2) and is exempt from prior approval by the Surface Transportation Board.

The names and business addresses of Applicants are as follows:

Gulf & Atlantic Railways, LLC
245 Riverside Ave, Suite 250
Jacksonville, FL 32202
Attention: Ryan Ratledge
(561) 448-2050

MIP GP
MIP V
MIP V Rail, LLC
125 W. 55th Street, 15th Floor
New York, NY 10019
Attention: Henry Blackford
(646) 415-1551

Applicants' Counsel:

Terence M. Hynes
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
thynes@sidley.com

1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

The parties intend to consummate the Transaction as soon as practicable after the effective date of this Verified Notice and the satisfaction of all other conditions precedent to closing set forth in the Purchase Agreement.

1180.6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess

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facilities, improving service, or improving the financial viability of the applicants.

Pursuant to the Transaction, G&A will acquire a 100% ownership interest in PVRR. G&A will bring significant financial strength, management expertise and short line railroad operating experience to the future operation and business of PVRR. MIP GP and its affiliates are experienced asset managers with a focus on infrastructure in the transportation, communications, utilities, and energy sectors. The Transaction will enhance PVRR's access to capital, facilitating continued investment in its rail lines.

PVRR will continue to serve customers located along its rail lines and to interchange traffic with the carriers with which it currently connects (CSXT at Westfield, MA and Pan Am Southern at Holyoke, MA). MIP V's considerable infrastructure investment capabilities, and G&A's rail operating experience, will assist PVRR in maintaining and growing its rail businesses.

1180.6(a)(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

PVRR operates entirely in the state of Massachusetts.

1180.6(a)(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory,

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and the principal geographic points in the region traversed.

A color map depicting PVRR's rail lines is attached as Exhibit 1.

1180.6(a)(7)(ii) ***Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.***

A copy of the Purchase Agreement is attached as Exhibit 2.¹⁴

1180.4(g)(i) ***Level of Labor Protection to be Imposed***

PVRR, and each of the carriers currently controlled by G&A, are Class III rail carriers. Therefore, in accordance with 49 U.S.C. § 11326(c), the labor protection provisions of 49 U.S.C. § 11326 do not apply to the present Transaction.

1105.6 ***Environmental Impacts***

49 C.F.R. § 1105.6(c) provides that no environmental documentation will normally be prepared where a transaction will not result in a “significant change in carrier operations” and does not exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5). The Transaction involves only a change in corporate control of PVRR and will not result in any operational changes. Therefore, the Transaction will not result in changes that exceed the relevant thresholds, and pursuant to the Board's regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

This action will not affect either the quality of the human environment or energy conservation.

¹⁴ Applicants are filing simultaneously with this Verified Notice a Motion for Protective Order to protect commercially sensitive information in the Purchase Agreement from public disclosure.

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1150.8 ***Historic Impacts***

Prior Board approval or exemption would be required if, in the future, Applicants proposed to abandon or discontinue rail service over any of the rail lines of PVRP. Applicants have no plans to dispose of or alter any property that is subject to the Board's jurisdiction and is 50 years old or older. Accordingly, pursuant to the Board's regulations at 49 C.F.R. § 1105.8(b)(1), this Verified Notice does not require a historic report.

1180.4(g)(3)(i) ***Interchange Commitments***

The Purchase Agreement does not include any provision that would limit the future interchange of traffic with any third-party connecting carrier.¹⁵

¹⁵ Section 1180.4(g)(3)(i), which refers to "acquisition or operation of a rail line," does not explicitly apply to a transaction involving the acquisition of control of a carrier. In any event, there is no interchange commitment in connection with the transaction that is the subject of this Verified Notice.

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* * *

For the foregoing reasons, Applicants respectfully request that the Board publish the requisite Notice of Exemption.

Respectfully submitted,

/s/ Terence M. Hynes

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Allison C. Davis

Marc A. Korman

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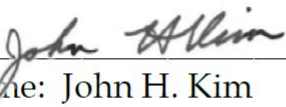
*Attorneys for Macquarie Infrastructure Partners V GP, LLC, MIP V,
MIP V Rail, LLC, and Gulf & Atlantic Railways, LLC*

Dated August 23, 2023

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VERIFICATION

I, John H. Kim, being duly sworn, state that I am General Counsel and Secretary of Macquarie Infrastructure Partners V GP, LLC and that I am an officer duly authorized to execute, verify, and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information, and belief.

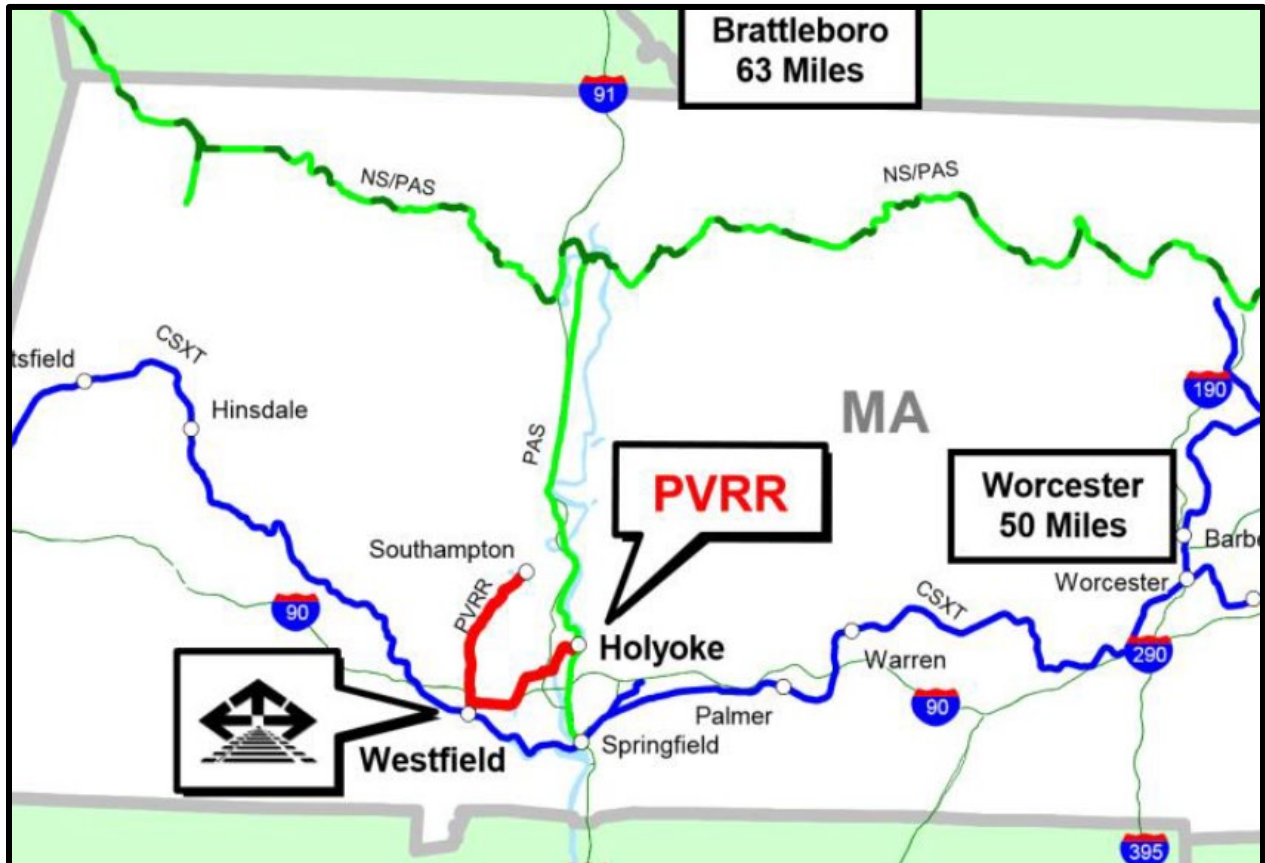


Name: John H. Kim

Title: General Counsel and Secretary

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EXHIBIT 1:
PVRR SYSTEM MAP



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**EXHIBIT 2:
PURCHASE AGREEMENT**

STOCK PURCHASE AGREEMENT

by and among

PINSLY RAILROAD COMPANY, as the Seller,

GULF & ATLANTIC RAILWAYS, LLC, as the Buyer

and, solely for purposes of Section 5.11, Section 6.8 and Section 7.3,

JOHN P. LEVINE

Dated as of August 19, 2023

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Exhibit B – Form of Escrow Agreement

Exhibit C – [REDACTED]

Disclosure Schedules

Schedule A – Net Working Capital Methodology (Illustrative Example as of May 31, 2023)

STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of August 19, 2023 (this “Agreement”), by and among Pinsly Railroad Company, a Delaware corporation (the “Seller”), Gulf & Atlantic Railways, LLC, a Delaware limited liability company, (the “Buyer”) and, solely for purposes of Section 5.11, Section 6.8 and Section 7.3, John P. Levine, an individual (“John Levine”).

W I T N E S S E T H:

WHEREAS, Pioneer Valley Railroad Company, Inc., a Nevada corporation (“PVRR Corp”), and Railroad Distribution Services, Inc., a Massachusetts corporation (“RDS Corp” and, together with PVRR Corp, the “Pre-Restructuring Acquired Entities”), are engaged in the business of (a) owning and operating a short line railroad, including providing rail transportation, transloading and railcar storage services, and (b) providing carload-based distribution services, including warehousing, reload, truck brokerage, storage and distribution services (collectively, the “Business”);

WHEREAS, as of the date hereof, the Seller owns all of the issued and outstanding Equity Interests of PVRR Corp and RDS Corp;

WHEREAS, after the consummation of the Pre-Transaction Restructuring (as defined below), including the conversion of the Pre-Restructuring Acquired Entities into limited liability companies as contemplated thereby, the Seller will own all of the issued and outstanding Equity Interests in PVRR and RDS (each as defined below) (collectively, the “Purchased Equity”); and

WHEREAS, at Closing (as defined below), the Buyer desires to purchase from the Seller, and the Seller desires to sell to the Buyer, all of the Purchased Equity, all in accordance with and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements hereinafter contained, the parties hereby agree as follows:

ARTICLE 1.
DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

“401(a) Plans” – See Section 5.12;

“Acquired Entity” or “Acquired Entities” shall mean, individually, or collectively, PVRR and RDS;

“Action” shall mean any claim, charge, action, cause of action, suit, demand, citation, summons, subpoena, complaint, proceeding, labor dispute, inquiry, audit, notice of violation, arbitration, investigation of any nature, audit or other legal proceeding, in each case, by or before any court, tribunal or other Governmental Entity or arbitral body;

“Adjustment Amount” – See Section 2.3(f);

“Adjustment Escrow Amount” shall mean an amount in cash equal to [REDACTED];

“Affiliate” shall mean any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another Person with the term “control” meaning, for this purpose, the power to direct or cause the direction of the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities or partnership, membership or other ownership interests, or by contract or otherwise; provided, however, that with respect to Buyer, the term “Affiliate” shall only include MIP V Rail (ECI) AIV, L.P., a Delaware limited partnership, and its Subsidiaries;

“Affiliate Transaction” – See Section 3.19.

“Agreement” – See Preamble hereto;

“Ancillary Agreements” shall mean each agreement, document, certificate or instrument delivered pursuant to, or in connection with, this Agreement and the Pre-Transaction Restructuring;

“Anti-Corruption Laws” shall mean all anti-corruption Laws applicable to the parties, and their respective affiliates, including without limitation the U.S. Foreign Corrupt Practices Act of 1977 (as amended);

“Assets” – See Section 3.10(b).

“Assignment and Assumption Agreement” means the assignment and assumption agreement to be entered into by Buyer and the Seller in connection with the consummation of the transactions contemplated hereby, substantially in the form attached hereto as Exhibit A;

“Balance Sheets” shall mean, collectively, the unaudited balance sheet of each Acquired Entity as of [REDACTED] as set forth in Section 3.6 of the Disclosure Schedules;

“Bonus Payments” shall mean the aggregate bonus payments to be paid by the Acquired Entities to their employees in respect of any customary bonus or similar annual discretionary payment to be paid in relation to employee performance during fiscal year 2023, as set forth in Section 1.1(a) of the Disclosure Schedules, which Bonus Payment shall be paid in accordance with Section 6.3;

“Business” – See Recitals hereto;

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in Boston, Massachusetts or New York, New York, are closed generally or required by Law to close;

“Buyer” – See Preamble hereto;

“Buyer Benefit Plan” – See Section 6.4(a);

“Buyer Group” means Buyer, its Subsidiaries (including, following the Closing, the Acquired Entities), any direct and indirect equityholder of Buyer and any of their respective Affiliates, in each case, without giving effect to the limitations set forth in the proviso in the definition of Affiliate.

– See Section 7.3;

“Campaign Finance Law” shall mean any applicable Laws related to political activity or campaign finance, including, but not limited to, the Federal Election Campaign Act, the regulations of the Federal Election Commission, pay-to-play Laws, and all state, provincial, territorial, and local Laws related to political activity and/or campaign finance;

“Cash” shall mean,

– See Section 7.5;

“Closing” – See Section 2.2;

“Closing Date” – See Section 2.2;

“Closing Date Net Working Capital” shall mean the Net Working Capital as of the Determination Time;

“Closing Payment Amount” shall mean an amount equal to (a) the Estimated Purchase Price *minus* (b) the Adjustment Escrow Amount;

“Closing Working Capital Report” – See Section 2.3(e);

“Closing Working Capital Statement” – See Section 2.3(d);

“Code” shall mean the Internal Revenue Code of 1986, as amended;

“Company Continuing Employee” – See Section 6.4(a);

“Company Intellectual Property” shall mean all Intellectual Property that is owned or purported to be owned by the Acquired Entities;

“Company IP Registrations” shall mean all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Entity or authorized private registrar in any jurisdiction;

“Confidential Information” shall mean, with respect to any Person, all information of such Person, including any such information relating to technology, products, services, finances, business plans, marketing plans, legal affairs, suppliers or customers, but shall not include information that (a) can be demonstrated in writing was already known by the recipient when received, (b) is or after the date of this Agreement becomes obtainable from other sources other than pursuant to a violation of Law or breach of any Contract, or (c) can be demonstrated in writing that it was independently developed by the recipient;

“Confidentiality Agreement” shall mean that certain Confidentiality Agreement entered into by and between the Buyer and Northborne Partners LLC, as agent of the Acquired Entities, dated May 23, 2023;

“Contracts” shall mean any written or oral legally binding contract, agreement, subcontract, lease, license or purchase order;

– See Section 7.6(c);

“Current Assets” shall mean

“Current Liabilities” shall mean

“D & O Policy” shall mean certain insurance policy or policies,

insuring the directors and officers of the Acquired Entities for a “run-off” or “tail” period of six (6) years following the Closing for losses incurred due to those directors’ and officers’ actions during their tenure as directors and officers of the Acquired Entities prior to the Closing providing coverage of not less than that of the directors’ and officers’ liability insurance coverage presently maintained by the Acquired Entities;

“Deficit Amount” – See Section 2.3(i);

“Determination Date” – See Section 2.3(e);

“Determination Time” shall mean 12:01 a.m. Eastern time on the Closing Date;

“Disclosure Schedules” – See preamble to Article 3;

“Environmental Claim” shall mean any Action by any Person alleging Liability of whatever kind or nature (including Liability or responsibility for the costs of enforcement

proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit;

“Environmental Laws” shall mean any and all Laws regulating, relating to or imposing Liability or standards of conduct concerning protection of the environment or of human health, or natural resources, including Laws relating to the manufacture, processing, distribution, use, handling, generation, labeling, transportation, storage, treatment, disposal, emission, discharge, presence, or Release of, or exposure to, any harmful or deleterious substance, chemical, petroleum, pollutant, contaminant, or hazardous or toxic material, substance or waste;

“Environmental Notice” shall mean any written directive, notice of violation or infraction, or other written notice respecting any Environmental Claim relating to actual or alleged Release of Hazardous Material, non-compliance with any Environmental Law or any term or condition of any Environmental Permit;

“Environmental Permits” shall mean any and all Licenses and Permits pursuant to or required under any Environmental Law;

“Equity Interests” shall mean issued and outstanding capital stock, partnership interests, limited liability company interests or other indicia of equity ownership (including any profits interest or phantom stock);

“Equity Sale” – See Section 2.1(a);

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder;

“ERISA Affiliate” shall mean, with respect to any entity, any other entity which, together with such first entity, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code;

“Escrow Agent” shall mean Citibank, N.A.;

“Escrow Agreement” shall mean the Escrow Agreement to be entered as of the Closing Date among Buyer, the Seller and the Escrow Agent, with respect to the Adjustment Escrow Amount in the form attached hereto as Exhibit B;

“Estimated Closing Date Net Working Capital” – See Section 2.3(a)(i);

“Estimated Closing Working Capital Statement” – See Section 2.3(a);

“Estimated Purchase Price” – See Section 2.3(a)(ii);

“Excluded Liabilities” – See Section 2.5;

“Ex-Im Laws” means applicable Laws relating to export, re-export, or transfer controls, including the Export Administration Regulations administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations administered by the U.S. Department of State, customs and import Laws administered by U.S. Customs and Border Protection, and antiboycott Laws and regulations administered by the U.S. Department of Commerce and U.S. Department of the Treasury;

“Existing Policies” – See Section 3.18;

“Expiration Date” – See Section 5.5(a).

“FCC” shall mean the Federal Communications Commission;

“FCC Approval” shall mean the consent of the FCC, pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948, for the transfer of control of the radio license authorization held by PVRR under call sign WQVA658.

“Final Cash” – See Section 2.3(e);

“Final Closing Date Net Working Capital” – See Section 2.3(e);

“Final Indebtedness” – See Section 2.3(e);

“Final Purchase Price” shall mean the Purchase Price calculated utilizing Final Cash, Final Indebtedness, Final Closing Date Net Working Capital, Final Transaction Expenses and the Final Tax Year 45G Tax Credit Adjustment;

“Final Transaction Expenses” – See Section 2.3(e);

“Financial Statements” – See Section 3.6(a);

“GAAP” shall mean U.S. generally accepted accounting principles as in effect from time to time;

“Government Grants” shall mean the outstanding grants for capital improvements awarded to any of the Acquired Entities;

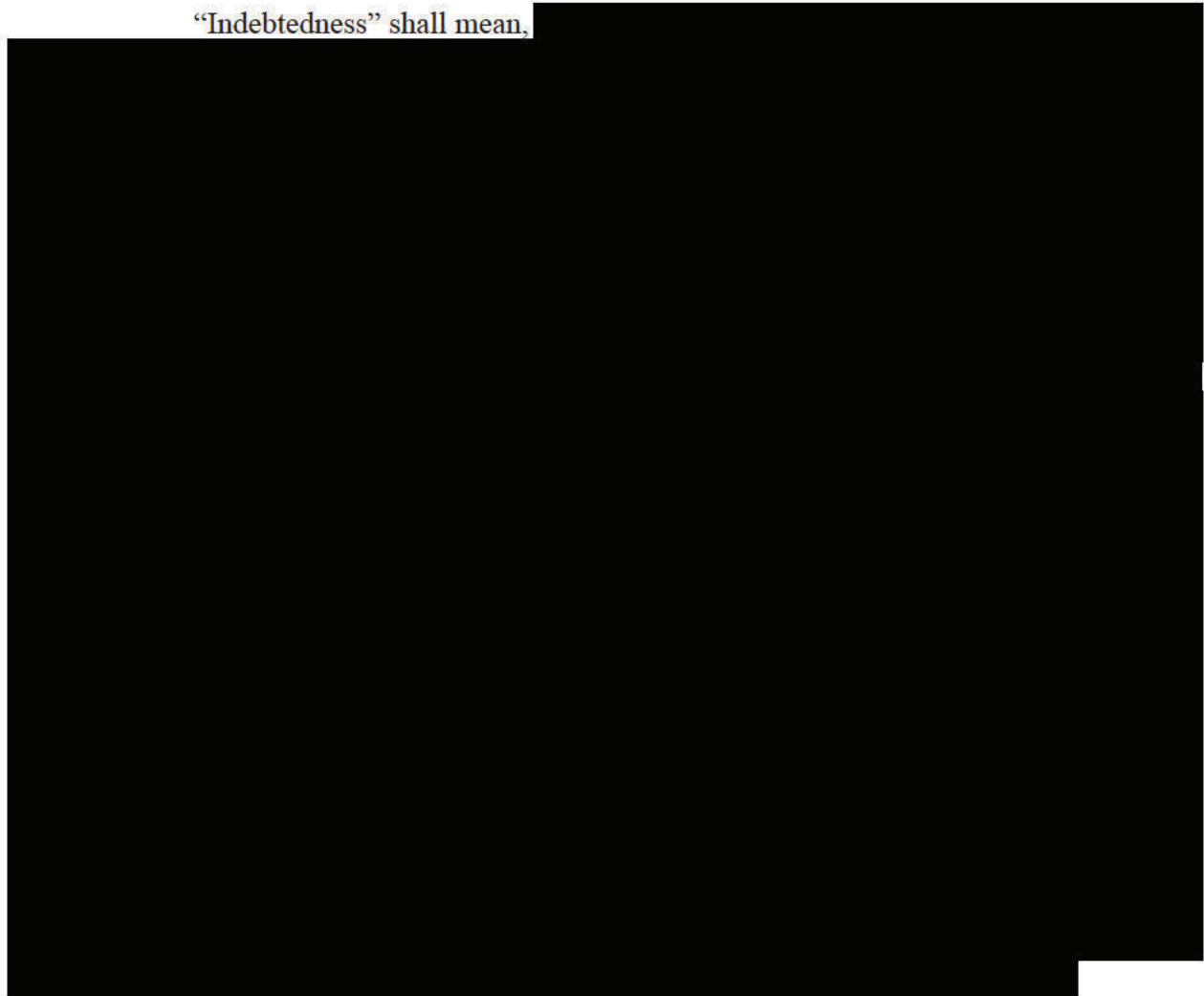
“Governmental Entity” shall mean any national, federal, state, provincial, local or international governmental or public body, political subdivision thereof, arbitrator, court, tribunal of competent jurisdiction, agency or regulatory authority or commission, or other governmental authority or instrumentality or quasi-governmental authority or any self-regulated organization or other non-governmental regulatory authority or any arbitrator, including the Federal Railroad Administration, the STB, the FCC and the Railroad Retirement Board;

“Governmental Order” shall mean any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity;

“Hazardous Materials” shall mean: (a) any material, substance, chemical, waste, product, commodity, derivative, compound, mixture, solution, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, reactive, flammable, radioactive, toxic, or words of similar import or regulatory effect or as defined under or giving rise to Liability under Environmental Laws, regardless of amount or volume; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, per- and polyfluoroalkyl substances, urea formaldehyde foam insulation and polychlorinated biphenyls, regardless of amount or volume;

“Increase Amount” – See Section 2.3(h);

“Indebtedness” shall mean,



– Section 7.5(b)(ii);

– Section 7.5(a);

– Section 7.5(a);

“Independent Accounting Firm” – See Section 2.3(e);

“Intellectual Property” shall mean any and all intellectual property, industrial or proprietary rights (by whatever name or term known or designated) arising under law or equity, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including: (a) trademarks, service marks, corporate names, logos, slogans, and trade names (collectively, “Trademarks”); (b) patents and patent applications, including all reissuances, divisionals, continuations, continuations-in-part, provisionals, extensions, and reexaminations thereof and patents issuing thereon; (c) trade secrets and other confidential and proprietary information; (d) copyrights, mask works, moral rights, works of authorship (whether or not copyrightable) in all works, including software programs, and registrations, registration applications, renewals and extensions therefor (“Copyrights”); (e) domain names and social media accounts; (f) Software; and (g) any and all Actions (whether past, present, or future) arising from or related to any of the foregoing, including the sole, exclusive, and independent right to enforce any and all such Actions;

“IRS” shall mean the Internal Revenue Service;

“IT Assets” shall mean Software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and all other information technology equipment, in each case, owned or controlled by, licensed to or used in the operation of the businesses of the Acquired Entities;

████████████████████ – See Section 6.6;

“John Levine” – See Preamble hereto;

████████████████████ – See Section 6.9;

“Law” shall mean any law, common law, constitution, statute, treaty, ordinance, rule, regulation, order, writ, judgment, injunction, settlement agreement, guideline, code, decree, edict or other legally enforceable requirement of any Governmental Entity, and includes rules and regulations of any regulatory or self-regulatory authority;

“Leased Real Property” shall mean all locations of real property, including, but not limited to, any land, buildings, structures, improvements, fixtures or other interests in real property that the Acquired Entities lease, sublease, license, rent or otherwise occupy under any lease, sublease, license or other occupancy agreement as a tenant, subtenant or licensee;

“Liability” shall mean any liability, debt, claim or obligation of any nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether direct or indirect, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due);

“Licenses and Permits” – See Section 3.13;

“Lien” shall mean any mortgage, deed of trust, lien (statutory or other), security interest, pledge, collateral security agreement, UCC financing statement, reservation, equitable interest, charge, preference, priority, license, easement, title defect, lease, sublease, conditional sale or other title retention agreement, right of first refusal, right of first offer, hypothecation,

covenant, condition, servitude, right of way, encroachment, variance, option, warrant, claim, community property interest, right of others, proxy, restrictive covenant, restriction (including any restriction on use, voting, transfer, ownership, alienation, receipt of income or exercise of any other attribute of ownership), voting trust, matter of record, or encumbrance of any kind;

— See Section 5.5(b);

“Lobbying Law” shall mean all applicable Laws concerning lobbying and other forms of government influence, including, but not limited to, the federal Lobbying Disclosure Act, the Foreign Agents Registration Act, state, provincial, territorial, and local lobbying Laws, any ethics Laws related to the conduct of lobbying, and all applicable registration and reporting requirements;

— See Section 7.3.

“Material Adverse Effect” shall mean any event, development, circumstance, effect or change that either (a) has had a material adverse effect on the business, operations, rights, properties, assets, Liabilities, condition (financial or otherwise), or results of operations of the Acquired Entities taken as a whole, or (b) would materially impair the ability of the Seller to perform any of its obligations under, and to consummate the transactions contemplated by, this Agreement or any other related agreements, except, with respect to clause (a) above, any event, development, circumstance, effect or change attributable to: (i) any condition affecting any industry or market in which the Acquired Entities participate, including the short-line railroad industry or distribution and transportation services industry, the United States or world economy, or the United States or global capital, banking, securities or financial markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (ii) compliance with, or taking action required by, this Agreement; (iii) any action (A) taken at the written request of the Buyer, (B) taken by the Buyer, (C) or required by Law; (iv) any matter disclosed in any schedule to this Agreement; (v) any change or absence of anticipated change in (A) applicable Law or the enforcement, implementation or interpretation thereof, (B) GAAP or other accounting requirements or principles or the implementation or interpretation thereof, (C) terms or availability of Buyer’s financing; (vi) national or international political or social conditions, such as (A) the commencement, continuation or escalation of war (in each case, whether or not declared), (B) calamities, (C) pandemics, (D) government sanctions, or (E) acts of terrorism; (vii) any action taken (or omitted to be taken) with the prior written consent of the Buyer; (viii) any natural or manmade disasters or acts of God; or (ix) any failure of the Acquired Entities to meet financial forecasts, projections or estimates (provided that the underlying causes of such failures (subject to other provisions of this definition) shall not be excluded); provided, however, that any event, occurrence, fact, condition or change referred to in clauses (i), (v)(A), (v)(B), (vi) and (viii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur only to the extent that (X) such event, occurrence, fact, condition or change has a disproportionate effect on the Acquired Entities as compared to other participants in the industries in which the Acquired Entities conduct the Business and (Y) such event, occurrence, fact, condition or change does not have a disproportionate effect on the Acquired Entities solely by virtue of such event, occurrence, fact, condition or change having a disproportionate effect on any customer of an Acquired Entity;

“Material Contracts” – See Section 3.16(a);

“Net Working Capital” – See Section 2.4;

“Net Working Capital Adjustment Amount” shall mean [REDACTED]

“Net Working Capital Methodology” shall mean [REDACTED]

[REDACTED] – Section 7.6(c);

“Non-Party Affiliates” – See Section 12.18;

“Organizational Documents” shall mean (a) in the case of a corporation, its certificate of incorporation (or analogous document) and bylaws (or analogous document); (b) in the case of a limited liability company, its certificate of formation (or analogous document) and limited liability company operating agreement; or (c) in the case of a Person other than a corporation or limited liability company, the documents by which such Person (other than an individual) establishes its legal existence or which govern its internal affairs (in each case of clauses (a), (b) and (c), as amended);

“Outside Date” – See Section 10.1(f);

“Owned Real Property” shall mean all parcels of real property owned in fee by the Acquired Entities, including, but not limited to, any buildings, structures, facilities, fixtures, systems and/or improvements located thereon or appurtenant thereto;

“Payment Information” – See Section 2.3(c);

“Payment Spreadsheet” – See Section 2.3(a)(iii);

“Permitted Liens” shall mean any (a) Liens for Taxes not yet due and payable and for which there are adequate reserves or accruals in accordance with GAAP, (b) Liens imposed by Law and incurred in the ordinary course of business for obligations not yet due to carriers, warehousemen, laborers, materialmen and the like, it being understood that such Liens do not include Liens arising under any applicable Environmental Law, (c) Liens in respect of pledges or deposits under workers’ compensation Laws, and (d) grade crossings or utility installations affecting portions of the Owned Real Property or Leased Real Property that do not materially and adversely affect the Business or the railroad operations of the Acquired Entities as currently conducted;

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or Governmental Entity;

“Personal Information” – See Section 3.12(a);

[REDACTED]

[REDACTED]

[REDACTED]

“Plans” – See Section 3.17(a);

“Post-Closing Tax Period” shall mean any taxable period (or portion of a taxable period) beginning after the Closing Date;

“Post-Signing Returns” – See Section 5.1(b);

“Pre-Closing Tax Period” shall mean any taxable period (or portion of a taxable period) ending on or before the Closing Date;

“Pre-Transaction Restructuring” – See Section 5.7;

“Privacy Laws” shall mean any Laws that relate to and/or address privacy, security, data use, consumer tracking, consumer targeting, data protection and destruction, data breach notification or data transfer issues, including, without limitation, HIPAA, the CAN-SPAM Act and all current and former implementing Laws, rules, regulations, and all guidelines and industry standards applicable to the Acquired Entities and the businesses of the Acquired Entities;

“Purchased Equity” – See Recitals hereto;

“Purchase Price” – See Section 2.1(b);

“Purchase Price Allocation” – See Section 11.5;

“PVRR” shall mean (a) prior to the Pre-Transaction Restructuring, PVRR Corp and (b) from and after the Pre-Transaction Restructuring, Pioneer Valley Railroad Company, LLC, a Nevada limited liability company (or different name reasonably acceptable to the Buyer if the desired name is not available upon conversion of the corporation);

“Rail Facilities” – See Section 3.10(a);

“RDS” shall mean (a) prior to the Pre-Transaction Restructuring, RDS Corp and (b) from and after the Pre-Transaction Restructuring, Railroad Distribution Services, LLC, a

Massachusetts limited liability company (or different name reasonably acceptable to the Buyer if the desired name is not available upon conversion of the corporation);

“Real Property” shall mean, collectively, the Leased Real Property and the Owned Real Property;

“Real Property Leases” means all leases, subleases, licenses, occupancy agreements, concessions and other agreements, pursuant to which the Acquired Entities hold any Leased Real Property;

— See Section 5.5(b);

“Regulations” shall mean the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of Treasury with respect to the Code or other federal tax statutes;

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the indoor or outdoor environment (including ambient air (indoor or outdoor)), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture;

“Releasing Person” – See Section 5.14;

“Restricted Business” – See Section 5.11(a);

“RWI Policy” shall mean that or those certain “buy-side” representations and warranties insurance policy or policies, to be purchased by the Buyer at its sole cost and expense, providing bound coverage as of the date of this Agreement insuring the Buyer for losses incurred by the Buyer resulting from the Seller’s breach(es) of those representations and warranties contained in Article 3 of this Agreement;

“Sanctioned Country” means any country against which the United States maintains comprehensive economic Sanctions or an embargo, which at the time of signing include the Crimea and so-called Donetsk People’s Republic and Luhansk People’s Republic regions of Ukraine, Cuba, Iran, North Korea, and Syria;

“Sanctioned Person” means (a) a person listed on a prohibited or restricted party list published by the United States government, including the U.S. Office of Foreign Assets Control “Specially Designated Nationals and Blocked Persons List” and “Consolidated Sanctions List,” or similar U.S. lists, or any such list maintained by the United Nations, the United Kingdom, the European Union or its Member States, or other applicable local authority; (b) the government,

including any political subdivision, agency, or instrumentality thereof, of any Sanctioned Country or Venezuela; (c) an ordinary resident of, or entity registered in or established under the jurisdiction of, a Sanctioned Country; or (d) a party acting or purporting to act, directly or indirectly, on behalf of, or a party fifty (50%) or more owned or controlled by, any of the parties listed in clauses (a)-(c);

“Sanctions” means any applicable economic or financial sanctions or trade embargoes administered or enforced by (a) the United States government, including the list of Specially Designated Nationals of the U.S. Department of the Treasury’s Office of Foreign Assets Control, (b) the United Nations Security Council, (c) the European Union, (d) His Majesty’s Treasury, or (e) any other relevant sanctions authority;

“Securities Act” shall mean the United States Securities Act of 1933, as amended, and all rules and regulations of the United States Securities and Exchange Commission promulgated thereunder;

“Security Breach” shall mean breach, security breach, breach of personal information and all similar terms as defined under any relevant Laws, including without limitation Privacy Laws;

“Security Incident” shall mean any material unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of IT Assets;

“Seller”– See Preamble hereto;

“Seller Employees” – See Section 6.4(d).

“Seller Fundamental Representations” shall mean the representations and warranties of the Seller set forth in Section 3.1, Section 3.2, Section 3.3, and Section 3.22;

████████████████████ – See Section 7.4;

“Software” shall mean any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, development tools, user interfaces and application programming interfaces, whether in source code or object code, (b) databases and computations, including any and all data and collections of data, whether machine readable or otherwise, (c) documentation, including user manuals, training materials, design notes and programmers’ notes relating to any of the foregoing and (d) the content and information contained in any web site;

“STB” shall mean the United States Surface Transportation Board;

“STB Approval” shall mean the final approval, authorization or exemption, as the case may be, of the transactions contemplated by this Agreement pursuant to 49 U.S.C. § 11323 *et seq.* and the STB’s related regulations at 49 C.F.R. § 1180 *et seq.*;

“Straddle Period” means any taxable period that includes (but does not end on) the Closing Date;

“Subsidiary” shall mean, with respect to any Person, any other Person (a) of which the first Person owns directly or indirectly 50% or more of the equity interest in the other Person; (b) of which the first Person or any other Subsidiary of the first Person is a general partner, or (c) of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions with respect to the other Person are at the time owned by the first Person and/or one or more of the first Person’s Subsidiaries;

“Tax Return” shall mean any report, return, declaration, statement, information return, filing, election, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing supplied or required to be supplied in connection with Taxes;

“Taxes” shall mean all United States federal, state, local and foreign taxes, including net income, gross income, gross receipts, production, excise, employment, sales, use, transfer, ad valorem, profits, license, capital stock, capital gains, franchise, severance, stamp, withholding, Social Security, railroad retirement, employment, unemployment, disability, worker’s compensation, payroll, utility, windfall profits, personal property, real property, intangible property, value added, escheat, unclaimed property, registration, alternative or add-on minimum, estimated and other taxes, customs, duties, governmental fees or like charges of any kind whatsoever, and any interest, penalties, fines, related Liabilities or additions relating thereto or imposed in connection with any obligation to file a Tax Return, and “Tax” shall mean any one of them;

“Tax Year 2023 45G Tax Credit Adjustment” shall mean [REDACTED]

“Tax Year 2023 45G Tax Credit Amount” shall mean [REDACTED]

“Terminated Employee” – See Section 6.5;

[REDACTED] – See Section 7.6(a);

“Transaction Bonuses” shall mean special bonuses to be paid by the Acquired Entities prior to the Closing, as determined by the Seller in its sole discretion, in appreciation of services during Seller’s ownership of the Acquired Entities;

“Transaction Expenses” – See Section 12.4;

[REDACTED] – See Section 5.5(a);

“Unpaid Taxes” means all unpaid Taxes of the Acquired Entities with respect to any Pre-Closing Tax Period (including, if applicable, the portion of the Straddle Period ending on the Closing Date), determined in accordance with Section 11.1(b), taking into account all Tax payments (including estimated Tax payments) made prior to the Closing Date; and

“WARN” – See Section 3.20(d).

ARTICLE 2.
PURCHASE AND SALE TRANSACTIONS.

Section 2.1. Purchase Price. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of the Seller set forth below, at the Closing:

(a) The Buyer shall purchase from the Seller, and the Seller shall sell, transfer, convey, assign and deliver to the Buyer (or the Buyer’s designee), all of the Purchased Equity, free and clear of all Liens (such transaction, the “Equity Sale”).

(b) The aggregate purchase price to be paid for the Purchased Equity (the “Purchase Price”) shall be an amount equal to: [REDACTED]

(c) The Buyer shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement (including any Increase Amount payable pursuant to Section 2.3(h)) such amount as the Buyer is required to deduct and withhold with respect to the making of such payment under the Code or any other applicable Tax Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for purposes of this Agreement as having been paid to the applicable Person in respect of which such deduction or withholding was made.

Section 2.2. Closing. Subject to the satisfaction or waiver of the terms and conditions set forth in this Agreement, the closing of the Equity Sale and the consummation of the other transactions contemplated by this Agreement (the “Closing”) shall take place remotely via the electronic exchange of documents and signature pages on the date that is the [REDACTED] following the satisfaction or waiver of the conditions set forth in Articles 8 and 9 (other than those conditions that by their terms cannot be satisfied until the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), or at such other place and time as may be mutually agreed to by the parties hereto (the “Closing Date”).

Section 2.3. Purchase Price Adjustment.

(a) No earlier than [REDACTED] the Seller shall prepare and deliver to the Buyer a written statement (the “Estimated Closing Working Capital Statement”) setting forth:

(i) the Seller’s good faith estimate of (A) the Closing Date Net Working Capital (the “Estimated Closing Date Net Working Capital”), (B) the aggregate amount of

Cash of the Acquired Entities, (C) the aggregate amount of Indebtedness of the Acquired Entities as of the close of business on the Closing Date, (D) the aggregate amount of Transaction Expenses that remain unpaid as of the Closing and (E) the Tax Year 2023 45G Tax Credit Adjustment, in each case, together with reasonable supporting materials used in the preparation of the Estimated Closing Working Capital Statement, and any additional information that Buyer reasonable requests to verify the amounts reflected in the Estimated Closing Working Capital Statement. The Estimated Closing Working Capital Statement (x) shall be prepared in accordance with the Net Working Capital Methodology and (y) shall not give effect to the consummation of the transactions contemplated by this Agreement, including any payments of cash in respect of the Purchase Price;

(ii) the resulting calculation of the Purchase Price based on the calculations set forth in Section 2.3(a)(i) (the “Estimated Purchase Price”); and

(iii) a true and correct list of the names, amounts and wire instructions (including callback information) for (A) each of the payees for any Indebtedness that is being repaid or otherwise extinguished as of the Closing, (B) each of the payees for any Transaction Expenses which are being paid as of the Closing and (C) the Seller (the statement set forth in this Section 2.3(a)(iii), the “Payment Spreadsheet”).

(b) During the period after the delivery of the Estimated Closing Working Capital Statement and prior to the Closing, Buyer shall have the opportunity to review and comment on the Estimated Closing Working Capital Statement, and the Seller shall reasonably cooperate with Buyer in good faith to respond to any questions regarding the Estimated Closing Working Capital Statement raised by Buyer and shall consider in good faith any comments from Buyer. To the extent the Seller agrees in writing to any adjustments to the Estimated Closing Working Capital Statement proposed by Buyer, the Estimated Closing Working Capital Statement and the resulting Estimated Purchase Price shall be deemed to be revised to take into account any such adjustments.

(c) Buyer and the other members of the Buyer Group and their respective representatives shall be entitled to rely, without any independent investigation or inquiry, on the names, amounts, wire instructions and other information set forth in the Payment Spreadsheet (collectively, the “Payment Information”). None of Buyer, the other members of the Buyer Group or any of their respective representatives shall have Liability to the Seller or any of its Affiliates, any other payee set forth in the Payment Spreadsheet or any other Person for relying on the Payment Information, including the payment of the consideration payable by the Buyer pursuant to Section 8.4(a), the payment of Transaction Expenses set forth therein and the repayment of the Indebtedness, in each case, in accordance with the Payment Information. The Payment Information may not be modified after delivery of the Payment Spreadsheet to Buyer except pursuant to a written instruction from the Seller, with certification from an authorized representative of the Seller that such modification is true and correct. Buyer, the other members of the Buyer Group and their respective representatives shall be entitled to rely, without any independent investigation or inquiry, on such modified Payment Information. For the avoidance of doubt, the Seller shall be solely responsible for ensuring that the applicable Payment Information is true and correct.

(d) As soon as reasonably practicable following the Closing Date, and in any event no later than [REDACTED] the Buyer shall prepare and deliver to the Seller a written statement (the “Closing Working Capital Statement”) setting forth a calculation of (i) the Closing Date Net Working Capital and the resulting the Net Working Capital Adjustment Amount, (ii) the aggregate amount of Cash of the Acquired Entities, (iii) the aggregate amount of Indebtedness of the Acquired Entities as of the close of business on the Closing Date, and (iv) the aggregate amount of Transaction Expenses that remained unpaid as of the Closing and (v) the Tax Year 2023 45G Tax Credit Adjustment. The Closing Working Capital Statement (x) shall be prepared in accordance with the Net Working Capital Methodology and (y) shall not give effect to the consummation of the transactions contemplated by this Agreement, including any payments of cash in respect of the Purchase Price.

(e) During the Buyer’s preparation of the Closing Working Capital Statement and any subsequent period of dispute with respect to the calculations required by this Section 2.3, the Seller shall cooperate in good faith with the Buyer to the extent reasonably requested by the Buyer to prepare the Closing Working Capital Statement or to investigate the basis for any dispute. The Closing Working Capital Statement shall be examined by the Seller, and the Seller shall, [REDACTED] after receipt of the Closing Working Capital Statement, render and deliver to the Buyer a written report thereon (the “Closing Working Capital Report”). During the preparation of the Closing Working Capital Report and any subsequent period of dispute with respect thereto, the Buyer shall provide the Seller with reasonable access during normal business hours on reasonable advance notice to the books and records (including work papers, schedules, memoranda and other documents) of the Acquired Entities that were used in the preparation of, or otherwise relate to, the Closing Working Capital Report, which materials and communications shall be subject to customary confidentiality agreements and access letters entered into by the Seller prior to receiving access to such materials, and Buyer shall make available the employees and other representatives who prepared the Closing Working Capital Report. The Closing Working Capital Report shall list with specificity those items, if any, from the Closing Working Capital Statement to which the Seller takes exception and shall explain the Seller’s proposed adjustments and be accompanied by appropriate information and documentation in reasonable detail supporting the Seller’s calculations. If the Seller fails to deliver to the Buyer a Closing Working Capital Report within [REDACTED] following receipt of the Closing Working Capital Statement, the Seller shall be deemed to have accepted the Closing Working Capital Statement for the purposes of any adjustment to the Purchase Price under this Article 2. If the Seller delivers to the Buyer a Closing Working Capital Report listing the Seller’s objections and otherwise complying with the requirements of this Section 2.3 within [REDACTED] following receipt of the Closing Working Capital Statement, the Buyer shall examine the Closing Working Capital Report and shall have [REDACTED] from receipt of such Closing Working Capital Report to notify the Seller of the Buyer’s objections to the Closing Working Capital Report. If the Buyer fails to notify the Seller of its objections to the Closing Working Capital Report within such [REDACTED] period, the Buyer shall be deemed to have accepted the Closing Working Capital Report for the purposes of any adjustment to the Purchase Price under this Article 2. If the Buyer gives the Seller notice of its objections to the Closing Working Capital Report, and if in good faith the Seller and the Buyer are unable, within [REDACTED] after receipt by the Seller of the notice from the Buyer of such objections, to resolve the disputed exceptions, such disputed exceptions will be referred to Ernst & Young or, if such firm is providing accounting or other services to either the Buyer, the Seller or any of their

respective Affiliates at the time of such dispute, another nationally recognized firm of independent certified public accountants (“Independent Accounting Firm”) mutually acceptable to the Seller and the Buyer. The Buyer and the Seller shall cooperate with the Independent Accounting Firm to the extent reasonably requested by the Independent Accounting Firm to prepare a written report. The Independent Accounting Firm shall, within [REDACTED] following its selection, deliver to the Seller and the Buyer a written report (accompanied by appropriate information and documentation in reasonable detail supporting the Independent Accounting Firm’s calculations) determining only such disputed exceptions, and its determinations will be final and binding upon the parties hereto for the purposes of any adjustment to the Purchase Price under this Article 2, absent arithmetic error by the Independent Accounting Firm or actual fraud. The determination by the Independent Accounting Firm with respect to any disputed exception shall not be higher than the higher amount, or lower than the lower amount, proposed by the parties. The fees and disbursements of the Independent Accounting Firm acting under this Section 2.3 shall be evidenced by a detailed and itemized statement and shall be allocated between Buyer and Seller based upon the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party. For example, if the Seller claims the Closing Date Net Working Capital is \$1,000 greater than the amount determined by Buyer, Buyer contests only \$500 of the amount claimed by the Seller, and the Independent Accounting Firm ultimately resolves the dispute by awarding the Seller \$300 of the \$500 contested, then the costs and expenses of the Independent Accounting Firm will be allocated 60% (i.e., $\$300 \div \500) to the Buyer and 40% (i.e., $\$200 \div \500) to the Seller. The Buyer agrees that following the Closing until such time as the Adjustment Amount is determined, it will not take any action, and the Seller agrees that prior to the Closing it will not take any action, with respect to the accounting, books, records, policies and procedures of any Acquired Entity that would obstruct or prevent the preparation of the Closing Working Capital Statement, the Closing Working Capital Report or the report of the Independent Accounting Firm as provided in this Section 2.3. The aggregate amount of Cash of the Acquired Entities, the aggregate amount of Indebtedness of the Acquired Entities as of the close of business on the Closing Date, the Closing Date Net Working Capital, the aggregate amount of the Transaction Expenses unpaid as of the Closing, and the Tax Year 2023 45G Tax Credit Adjustment, in each case as finally determined pursuant to this Section 2.3(e), shall be referred to herein as the “Final Cash,” the “Final Indebtedness,” the “Final Closing Date Net Working Capital,” and the “Final Transaction Expenses” and the “Final Tax Year 45G Tax Credit Adjustment”. The date on which the Final Cash, Final Indebtedness, Final Closing Date Net Working Capital, the Final Transaction Expenses and Final Tax Year 45G Tax Credit Adjustment are finally determined in accordance with this Section 2.3(e) is hereinafter referred to as the “Determination Date”.

(f) The “Adjustment Amount,” which may be positive or negative, shall mean an amount equal (i) the Final Purchase Price *minus* (ii) the Estimated Purchase Price.

(g) If the Adjustment Amount is equal to zero Dollars (\$0), then Buyer and the Seller shall direct the Escrow Agent to pay the Seller an amount equal to the Adjustment Escrow Amount.

(h) If the Adjustment Amount is a positive number (such amount, the “Increase Amount”), then (i) Buyer and the Seller shall direct the Escrow Agent to pay to the Seller an

amount equal to the Adjustment Escrow Amount and (ii) Buyer shall pay, or cause to be paid, to the Seller an amount equal to the Increase Amount.

(i) If the Adjustment Amount is a negative number (the absolute value of such amount, the “Deficit Amount”), then the Buyer and the Seller shall direct the Escrow Agent to (i) pay Buyer from the Adjustment Escrow Amount an amount equal to the lesser of (A) the Deficit Amount and (B) the Adjustment Escrow Amount and (ii) pay to the Seller any remaining portion of the Adjustment Escrow Amount following the application of the preceding clause (A); provided, however, that if the Deficit Amount exceeds the Adjustment Escrow Amount, the Seller shall pay Buyer an amount equal to the excess of (x) the Deficit Amount, *minus* (y) the Adjustment Escrow Amount.

(j) Notwithstanding anything to the contrary contained herein, the process and adjustment set forth in this Section 2.3 shall be the sole and exclusive remedy of the Buyer and the Seller with respect to items required hereunder to be included or reflected in the calculation of the Purchase Price pursuant to Section 2.1(b).

(k) Any payment pursuant to this Section 2.3 shall be made within [REDACTED] by wire transfer of immediately available funds and delivered to such bank account as shall be designated in writing by the party to which such payment is to be made, which shall be in accordance with the Payment Information with respect to the Seller. The parties and their respective Affiliates shall treat any payments made pursuant to Section 2.3(h) and Section 2.3(i) as an adjustment to the Purchase Price for Tax purposes.

Section 2.4. Net Working Capital. For purposes of Agreement, “Net Working Capital” shall mean an amount equal to Current Assets *less* Current Liabilities.

Section 2.5. Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, (a) any Liability with respect to any Affiliate Transaction, (b) any Liability under or relating to any Plan as a result of the execution of this Agreement, shareholder approval of this Agreement or the transactions contemplated by this Agreement, and (c) the Seller’s Transaction Expenses, in each case, shall not be Liabilities or obligations of the Buyer or the Acquired Entities at or after the Closing (collectively, the “Excluded Liabilities”).

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller hereby represents and warrants to the Buyer, as of the date hereof and as of the Closing Date or, if a representation or warranty is made as of a specific date, as of such date, subject to such information as is disclosed in the corresponding section of the disclosure schedules to this Agreement (the “Disclosure Schedules”), as follows:

Section 3.1. The Seller.

(a) Organization; Authorization and Validity. The Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all necessary power and authority to own its properties, rights and assets and to conduct its business as now conducted. The Seller has the requisite capacity, power and authority to enter into and

deliver this Agreement and the Ancillary Agreements to which the Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Seller of this Agreement and the Ancillary Agreements to which the Seller is a party and the performance by the Seller of its obligations hereunder and thereunder have been duly authorized by all necessary action by the board of directors and the sole voting stockholder of the Seller, and no other actions on the part of the Seller are necessary to authorize such execution, delivery and performance. The Seller has duly executed and delivered this Agreement and the Ancillary Agreements to which the Seller is a party and, assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by the other parties thereto, this Agreement and such Ancillary Agreements constitute the Seller's valid and binding obligation enforceable against the Seller in accordance with its terms.

(b) Ownership of Purchased Equity. Prior to the Pre-Transaction Restructuring, the Seller owns, beneficially and of record, all of the issued and outstanding Equity Interests of PVRR Corp and RDS Corp and, from and after the completion of the Pre-Transaction Restructuring, the Purchased Equity will comprise all of the issued and outstanding Equity Interests of PVRR and RDS, the Purchased Equity will be owned, beneficially and of record, by the Seller, free and clear of any Liens other than Liens as may be created by or on behalf of the Buyer, and the Purchased Equity has been duly authorized and validly issued and is fully paid, nonassessable and was not issued in violation of any preemptive rights, rights of first refusal or any similar rights. There are no outstanding or authorized obligations, warrants, convertible or exchangeable securities, subscriptions, equity appreciation rights, options or other rights (including preemptive rights), to subscribe for or purchase from any Acquired Entity, or other Contracts, commitments of any character, or agreements providing for the issuance of or granting any Person the right to acquire any Equity Interests of any Acquired Entity, or any securities or other instruments convertible into or exchangeable or exercisable for any Equity Interests of any Acquired Entity, and no Acquired Entity is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire, or to register under the Securities Act, any of its Equity Interests. There are no proxies, voting agreements, stockholder agreements or other agreements with respect to the voting or transfer of any Equity Interests of any of the Acquired Entities. None of the Acquired Entities has any outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. At Closing, the Buyer shall be assigned good and valid title to all of the Purchased Equity, free and clear of any Liens other than such Liens as may be created by or on behalf of the Buyer. Other than this Agreement, the Seller is not bound by any Contract restricting its right to transfer the Purchased Equity.

(c) There are no securities or rights of any Acquired Entity or Contracts, commitments, understandings or arrangements by which any Acquired Entity is bound obligating any Acquired Entity to redeem or otherwise acquire any Purchased Equity or other Equity Interests of any Acquired Entity. No Acquired Entity has any outstanding bonds, debentures, notes or other similar obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the equityholders of such Acquired Entity. None of the issued and outstanding Equity Interests of any Acquired Entity was issued, sold or transferred in violation of the Securities Act of 1933, as amended, or any other applicable securities Law.

(d) There are no (i) preemptive rights, rights of first refusal, options, put or call rights or obligations or anti-dilution rights related by or to which any Acquired Entity is subject with respect to the issuance, sale or redemption of any Equity Interests or assets of any Acquired Entity or (ii) rights to have any Equity Interests of any Acquired Entity registered for sale to the public in connection with the Laws of any jurisdiction.

Section 3.2. Corporate Organization, Authority and Qualification of the Acquired Entities.

(a) Prior to the Pre-Transaction Restructuring, each of the Acquired Entities is a corporation, duly organized, validly existing and in good standing under the Laws of the state of its incorporation and from and after the Pre-Transaction Restructuring, each of the Acquired Entities is a limited liability company, duly organized, validly existing and in good standing under the Laws of the state of its formation, and has all requisite power and authority to own, operate or lease the assets, rights or properties now owned, licensed or leased by it, and to conduct its business as now conducted, and is duly licensed or qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the character of the properties, rights and assets owned, licensed or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except that the failure to be so licensed or qualified and in good standing would not reasonably be expected to have a Material Adverse Effect. All actions taken by the Acquired Entities have been duly authorized, and none of the Acquired Entities has taken any action that in any respect conflicts with, constitutes a default under, or results in a violation of, any provision of its Organizational Documents. Each of the Acquired Entities has all requisite power and authority to enter into and deliver any Ancillary Agreements to which it is a party, to consummate the transactions contemplated thereby and to carry out its obligations thereunder. The execution and delivery by each Acquired Entity of the Ancillary Agreements to which it is a party and the performance by each Acquired Entity of its obligations thereunder have been duly authorized. Each Ancillary Agreement to which any Acquired Entity is a party has been duly executed and delivered by such Acquired Entity and, assuming the due authorization, execution and delivery of such Ancillary Agreement by each of the parties thereto, such Ancillary Agreement constitutes the valid and binding obligation of such Acquired Entity, enforceable against such Acquired Entity in accordance with its terms.

(b) Section 3.2(b) of the Disclosure Schedules sets forth a true and complete list of the Acquired Entities both prior to the Pre-Transaction Restructuring and from and after the Pre-Transaction Restructuring, listing for each Acquired Entity its name, type of entity, the jurisdiction and date of its incorporation or formation, its authorized capital stock (as applicable), the number and type of its issued and outstanding Equity Interests, and the ownership of such Equity Interests. Copies of the Organizational Documents of the Acquired Entities, each as amended to date and currently in full force and effect, have been furnished to the Buyer and its representatives, and such copies are accurate and complete and no other organizational or governing documents are applicable to, or binding on, any of the Acquired Entities.

(c) There are no other corporations, partnerships, joint ventures, associations or other entities in which any Acquired Entity owns, of record or beneficially, any direct or indirect Equity Interest or any right (contingent or otherwise) to acquire the same. None of the Acquired

Entities is a member of (nor is any part of the Business conducted through) any partnership nor is any Acquired Entity a participant in any joint venture or similar arrangement.

Section 3.3. No Conflict or Violation.

(a) The execution, delivery and performance by the Seller of this Agreement, the Ancillary Agreements to which it is a party and the transactions contemplated hereby and thereby do not and will not (i) violate or conflict with any provision of the Organizational Documents of the Seller or the Acquired Entities, (ii) assuming each of the STB Approval and FCC Approval has been obtained, violate or breach any Law, order, judgment or decree of any Governmental Entity applicable to the Seller or any of the Acquired Entities or any of their respective assets or business, or (iii) except as set forth on Section 3.3(a) of the Disclosure Schedules, violate, conflict with or result in a breach of or constitute (with or without due notice or lapse of time or both) a default, require consent or notice under, or give to others any rights of termination, acceleration, amendment, vesting, suspension, modification, revocation or cancellation of, or result in the creation or imposition of any Lien upon the Seller's or Acquired Entities' assets, properties or rights of the Seller or Acquired Entities under any Contract to which any of the Acquired Entities is a party or by which any of them are bound or to which any of their respective assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to (or accelerate) a right thereunder to require any payment to be made by the Seller or Acquired Entities.

(b) There is no pending Action or, to the knowledge of the Seller, threatened Action before any Governmental Entity by or against the Seller or any Acquired Entity relating to (i) the Seller's ownership of the Purchased Equity or (ii) any actual or potential bankruptcy or insolvency of the Seller or any Acquired Entity.

Section 3.4. Consents and Approvals. Except as set forth on Section 3.4 of the Disclosure Schedules, the execution, delivery and performance of this Agreement by the Seller and the Ancillary Agreements to which the Seller is a party or the consummation of the transactions contemplated hereby and thereby by the Seller do not and will not require any consent, waiver, approval, license, authorization or permit of, or order of, action by, filing with or notification to, any Governmental Entity or Person, except for the STB Approval and the FCC Approval.

Section 3.5. Indebtedness. Except as set forth on Section 3.5 of the Disclosure Schedules, none of the Acquired Entities has any Indebtedness.

Section 3.6. Financial Statements.

(a) Section 3.6(a) of the Disclosure Schedules consists of the following financial statements (the "Financial Statements"): (i) the Balance Sheets and the related unaudited statements of income, as applicable, [REDACTED] and (ii) the audited consolidated balance sheets of Seller as of [REDACTED] and the related audited statements of income and cash flows for [REDACTED]. The Financial Statements have been based upon the information contained in the Acquired Entities' and, with respect to the audited Financial Statements, the Seller's books and records, have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, and present

fairly in all material respects, (x) with respect to the unaudited Financial Statements, the financial condition and results of operations of the Acquired Entities as of the times and for the periods referred to therein.

(b) Except as set forth in Section 3.6(b) of the Disclosure Schedules, the Acquired Entities have no Liabilities or commitments of a nature, whether or not required to be disclosed in a balance sheet prepared in accordance with GAAP in all material respects, except (i) Liabilities which are adequately and properly reflected or reserved against in the Financial Statements, (ii) unpaid Transaction Expenses, and (iii) Liabilities incurred in the ordinary course of the Business since [REDACTED] (none of which is a Liability resulting from breach of Contract, breach of warranty, tort, infringement, misappropriation, Action or violation of Law and none of which is material, either individually or in the aggregate), and (iv) leases and accrued payroll and annual employee bonuses.

(c) The accounts receivable reflected on the Balance Sheets and the accounts receivable arising after the date thereof (i) have arisen from bona fide transactions entered into by the Acquired Entities involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (ii) constitute valid claims of the Acquired Entities not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice.

Section 3.7. Conduct in the Ordinary Course; Absence of Certain Changes, Events and Conditions.

(a) Except as set forth on Section 3.7(a) of the Disclosure Schedules, since [REDACTED] the Acquired Entities have not suffered any effects, changes, events or developments that have had or would reasonably be expected to have a Material Adverse Effect.

(b) Since [REDACTED], the Acquired Entities have operated and conducted the Business in the ordinary course of business consistent with past practice and, except as set forth on Section 3.7(b) of the Disclosure Schedules, have not taken any action that if taken after the date hereof would be prohibited by Section 5.1.

Section 3.8. Tax Matters. Except as set forth on Section 3.8 of the Disclosure Schedules:

(a) Each Acquired Entity has filed all Tax Returns required to have been filed by it (taking into account any extensions of time to file) and such Tax Returns are true, complete and correct in all respects. Each Acquired Entity has paid all Taxes (whether or not shown as due on such Tax Returns). All Taxes that any Acquired Entity is obligated to withhold from amounts owing to any employee, creditor or third party have been withheld and timely paid.

(b) No Tax audits or administrative or judicial Tax proceedings, claims, suits or Actions are presently being conducted or, to the knowledge of the Seller, are pending or

threatened with respect to any Acquired Entity. No Acquired Entity has received from any taxing authority any written notice of deficiency or proposed adjustment for any amount of Tax that has not been fully paid or settled. No Acquired Entity has waived any statute of limitations in respect of Taxes beyond the date hereof or agreed to any extension of time beyond the date hereof with respect to a Tax assessment or deficiency, which waiver or extension is still outstanding.

(c) No Acquired Entity (i) has been a member of an affiliated group filing a consolidated federal income Tax Return or any state, local or foreign consolidated, combined, affiliated or unified group or (ii) has any Liability for the Taxes of any Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by contract or pursuant to any Law (other than pursuant to ordinary course agreements, such as leases or loans, the primary focus of which is not Taxes).

(d) No Acquired Entity has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction within [REDACTED] ending on the date of this Agreement that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

(e) There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of any Acquired Entity.

(f) No Acquired Entity is a party to, or bound by, any Tax sharing, allocation or indemnity agreement, arrangement or similar Contract.

(g) Each Acquired Entity has properly collected and remitted sales, use, property, value-added, goods and services and similar Taxes with respect to sales, services and similar transactions.

(h) No claim or assertion has been made, or has been threatened, by any Governmental Entity against any Acquired Entity in any jurisdiction where such Acquired Entity does not currently file a Tax Return that it is or may be subject to Tax by such jurisdiction.

(i) Seller is, and has been since [REDACTED], taxed as an S corporation for U.S. federal income Tax purposes (and any corresponding provision of state or local law). No event has occurred (or fact has existed) that would preclude Seller from qualifying as an S corporation under Code Section 1361(a) (or any corresponding provision of state or local law) or which would terminate Seller's S corporation status.

(j) Since [REDACTED] and until the Pre-Transaction Restructuring, each of PVRR Corp and RDS Corp has properly elected and been properly classified as a qualified subchapter S subsidiary (within the meaning of Section 1361(b)(3)(B) of the Code (and any corresponding provision of state or local law)).

(k) Since [REDACTED], each of PVRR and RDS has been treated as a disregarded entity for U.S. federal and applicable state and local income Tax purposes.

(l) Neither Seller nor any Acquired Entity has, or has ever had, any Liability for Taxes under Section 1374 of the Code (or any similar provision of state or local law) and

neither Seller nor any Acquired Entity will have such a Liability as a result of the transactions contemplated by this Agreement.

(m) No Acquired Entity has participated in any “reportable transaction” within the meaning of Regulations Section 1.6011-4.

(n) No Acquired Entity has ever had any direct or indirect interest in an entity that is treated as a partnership for Tax purposes.

(o) No assets of the Acquired Entities are subject to the “anti-churning” rules of Section 197(f)(9) or 168(f)(5) of the Code.

(p) No Acquired Entity will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) “closing agreement” described in Section 7121 of the Code executed on or prior to the Closing Date, (ii) change in method of accounting, closing agreement, installment sale, the receipt of any prepaid amount or deferred revenue, in each case, prior to the Closing, (iii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date, (iv) installment sale or open transaction disposition made on or prior to the Closing Date, or (v) election under Code §108(i).

No representation or warranty is made in this Agreement with respect to the amount, sufficiency or usability of any net operating loss, capital loss, Tax basis or other Tax attribute after the Closing.

Section 3.9. Real Property.

(a) Section 3.9(a) of the Disclosure Schedules sets forth a true, accurate and complete list of the Owned Real Property. Except as set forth on Schedule 3.9(a) of the Disclosure Schedules, the Acquired Entities have good, valid and marketable indefeasible fee simple title to each of the Owned Real Property free and clear of all Liens except for Permitted Liens. To the extent in the Acquired Entities’ possession or control, true and complete copies of all deeds and other instruments (as recorded) by which the Acquired Entities acquired each Owned Real Property, title insurance policies and surveys in the possession of the Acquired Entities and relating to the Owned Real Property have been made available to Buyer.

(b) No Owned Real Property is subject to any sales Contract, purchase option, right of first refusal, right of first offer, similar agreement or other contractual obligation to sell, assign or dispose of any of the Owned Real Property or any portion thereof or interest therein to any Person. The Acquired Entities are in possession of the Owned Real Property and have not leased, licensed, subleased, or otherwise granted the right to use, operate or occupy any parcel or any portion of any parcel of any Owned Real Property to any other Person, except pursuant to Permitted Liens. None of the Acquired Entities have received any written notice from any owner of real property immediately contiguous to any Owned Real Property alleging boundary disputes or disputes related to impairment of the Acquired Entities’ access to and from any Owned Real Property.

(c) None of the Acquired Entities is a party to any Contract to purchase any real property or interest therein that is not closed.

(d) Section 3.9(d) of the Disclosure Schedules, as of the date hereof, sets forth a true, accurate and complete list of each Real Property Lease. True and complete copies of all Real Property Leases have been made available to Buyer. The Acquired Entities have a valid, existing, binding and enforceable leasehold estate in, and enjoy peaceful and undisturbed possession of, all the Leased Real Property. Each Real Property Lease is in full force and effect, legal, valid and binding on the parties thereto, and enforceable in accordance with its terms. Except as disclosed on Section 3.9(d) of the Disclosure Schedules, there are no subleases, licenses or similar agreements granting to any Person other than the Acquired Entities the right to use or occupy any Leased Real Property, except pursuant to Permitted Liens. None of the Acquired Entities have assigned, transferred, mortgaged, collaterally assigned, granted any other security interest in, or pledged any interest in any of the Real Property Leases.

(e) As of the date hereof, none of the Acquired Entities has received any written or oral notice from any counterparty of any Real Property Lease of, nor does the Seller have knowledge of the existence of, any default, event or circumstance that, with or without notice, lapse of time, or both, would constitute a default under any of the Real Property Leases, or would permit termination, cancellation, material modification, or acceleration of rent or any other payment under such Real Property Lease.

(f) All rent, charges or other material payments due pursuant to each Real Property Lease have been timely paid, and there are no deferred payments of rent or other amounts that remain unpaid. No security deposit or portion thereof deposited pursuant to the terms of a Real Property Lease has been applied in respect of a breach or default that has not been redeposited in full. There are no unpaid landlord or tenant obligations, commissions or other amounts payable to or on behalf of any brokers, finders, agents or similar parties in connection with the current term of any Real Property Lease.

(g) The Real Property constitutes all of the real property used and occupied by the Acquired Entities for the operation of the Business as currently conducted. Except as disclosed on Section 3.9(g) of the Disclosure Schedules, each Real Property is in material compliance with applicable Laws (including federal, state, local or other governmental building, zoning, health, safety and other land use or other governmental Laws, regulations and ordinances, as well as the requirements of the Americans with Disabilities Act), certificates of occupancy, covenants, conditions, restrictions, easements, licenses, Licenses and Permits and agreements. Except as disclosed on Section 3.9(g) of the Disclosure Schedules, no improvement, and no current use of any Real Property, is dependent on the continuance of a nonconforming use, zoning variance or other zoning exception.

(h) None of the Acquired Entities has received any written or oral notice, affecting any of the Real Property, of: (i) any pending or threatened condemnation, eminent domain, taking, transfer in lieu thereof or other similar proceeding by any Governmental Entity, or any zoning, building code, or other moratorium legal proceeding to impose any special assessment; and (ii) any use or uses being in violation of federal, state, local or other governmental building, zoning, traffic, fire, health, sanitation, air pollution or safety law or other applicable Law,

ordinance, License and Permit or regulation that has not been cured to the satisfaction of the party issuing such notice.

(i) Except as disclosed on Section 3.9(i) of the Disclosure Schedules, the Acquired Entities have in each Real Property, to the extent necessary to conduct the Business as currently conducted, (i) direct or indirect legal access to and from an adjacent public or private road or street with adequate ingress or egress available to such Real Property and there are no pending or threatened proceedings that could have the effect of impairing or restricting such access; and (ii) reasonable access to water supply, storm and sanitary sewer facilities, telephone, gas and electrical connections, fire protection, drainage and other utilities, all of which utilities are provided via public roads or via appurtenant easements benefitting the Real Property. Except as disclosed on Section 3.9(i) of the Disclosure Schedules, all necessary water, oil, gas, electrical, steam, compressed air, telecommunications, sewer, storm and waste water systems and other utility services or systems for the development, construction, maintenance, operation and servicing of the Real Property have been installed, granted, effected, performed and completed and are operational and sufficient for the operation of the Real Property as currently conducted, and all hook-up fees and other similar fees and charges have been paid in full.

(j) Except as disclosed on Section 3.9(j) of the Disclosures Schedules, all buildings, structures, foundations, improvements, fixtures, buildings systems and equipment, and all components thereof, located on the Real Property are in good operating condition and repair (normal wear and tear excepted) in all material respects and are fit and sufficient for use in the ordinary course of the Business as currently conducted. To the knowledge of the Seller, all such buildings and improvements have been constructed, installed and maintained in all material respects in accordance with all applicable Laws. To the knowledge of the Seller, none of the Real Property has been damaged or destroyed by fire or other casualty that has not been restored or not in the process of being restored. Except as disclosed on Section 3.9(j) of the Disclosures Schedules, there is no ongoing or anticipated material construction, development, alterations or renovations of any form at the Real Property.

Section 3.10. Rail Facilities; Assets.

(a) The Acquired Entities hold valid and sufficient property interests and operating rights in and to the rights-of-way and rail lines depicted on the maps and specified by the mileposts referenced in Section 3.10(a) of the Disclosures Schedule, and to the adjacent yards, terminals, transload facilities, side tracks, spur tracks and other rail facility appurtenances thereto (collectively, the “Rail Facilities”), to permit the Acquired Entities to conduct their Business, including rail freight operations on and over the Rail Facilities, as such operations are conducted by the Seller and the Acquired Entities as of the date hereof. No Acquired Entity is a party to any Contract or subject to any Governmental Order that would deprive such Acquired Entity of the ability to operate substantially as the Seller and the applicable Acquired Entity operates the Business over the Rail Facilities as of the date hereof.

(b) Each Acquired Entity owns, leases or has the legal right to use all assets, fixtures, machinery, equipment, locomotives, rolling stock, vehicles, properties and rights (whether real, personal, or intangible, and including the Rail Facilities) (collectively, the “Assets”) used in the conduct of the Business as currently conducted. The Assets are in good operating

condition and repair (reasonable wear and tear excepted), are in compliance with all applicable Laws, and are sufficient and suitable for the purposes for which they are used by the applicable Acquired Entity in the Business as currently conducted and will be sufficient for the continued conduct of the Business immediately after the Closing in substantially the same manner as conducted immediately prior to the Closing.

Section 3.11. Intellectual Property.

(a) Section 3.11(a) of the Disclosure Schedules sets forth a complete, correct and current list of all (i) Company IP Registrations and [REDACTED] (showing in each, as applicable, the owner, jurisdiction, and registration or application number), and (ii) any material unregistered Trademarks and Copyrights included in the Company Intellectual Property. The Company IP Registrations and [REDACTED] are valid, subsisting and enforceable. Except as set forth in Section 3.11(a) of the Disclosure Schedules, there are no actions that must be taken by the Acquired Entities within [REDACTED] (including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates) for the purposes of perfecting, maintaining or renewing any Company IP Registrations and [REDACTED]. No interference, opposition, cancellation, reissue, reexamination or other proceeding is pending or, to the knowledge of the Seller, threatened, in which the scope, validity or enforceability of any Company IP Registrations and [REDACTED] are being, have been, or would reasonably be expected to be contested or challenged. No Company IP Registrations and [REDACTED] that are material to the conduct of the Business has at any time during the past [REDACTED] been unintentionally abandoned or allowed to lapse by any Acquired Entity or Seller, as applicable.

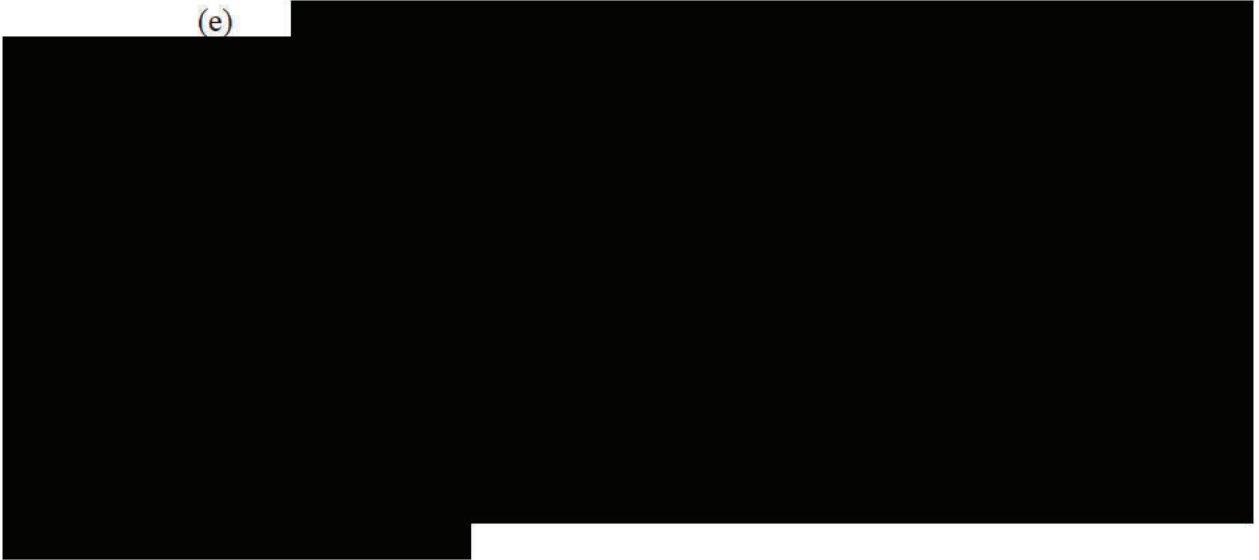
(b) Each Acquired Entity owns or has a valid and enforceable license or otherwise has the right to use all Company Intellectual Property used in the Business as currently conducted. Such use and the conduct of the Business have not infringed, violated or conflicted with, or misappropriated, and do not infringe, violate or conflict with, or misappropriate, the rights of any third party. To the knowledge of the Seller, no third party has infringed upon, violated or misappropriated or is infringing, violating or misappropriating any Company Intellectual Property. Except as set forth on Section 3.11(b) of the Disclosure Schedules, all Company Intellectual Property is owned solely and exclusively by one of the Acquired Entities, free and clear of all Liens, other than Permitted Liens, and free and clear of any rights of the Seller or its other Affiliates (other than the Acquired Entities). There has not been communicated to the Seller the threat of any claim that the holder of such Company Intellectual Property or any Acquired Entity is violating, infringing or misappropriating any Intellectual Property right of any third-party, or challenging any of the Acquired Entities' ownership or use of, or the validity or enforceability of, any of the Company Intellectual Property. None of the Acquired Entities has threatened action against or provided notice or any other communication to any Person for violating, infringing or misappropriating the Company Intellectual Property.

(c) No Acquired Entity has developed any Software.

(d) Neither the execution, delivery or performance of this Agreement nor the consummation of the transaction will, with or without notice or the lapse of time or both, result in or give any other Person the right or option to cause or declare: (i) a loss of, or Lien on, any

Company Intellectual Property and/or [REDACTED] (ii) the release, disclosure or delivery of any Company Intellectual Property and/or [REDACTED] by or to any escrow agent or other Person; (iii) the grant, assignment or transfer to any other Person of any license or other right or interest under, to or in any Company Intellectual Property and/or [REDACTED] or (iv) payment of any royalties or other license fees with respect to Intellectual Property of any other Person in excess of those payable by any Acquired Entities in the absence of this Agreement or the transaction.

(e)



(f) The IT Assets are adequate for, and operate and perform in all material respects as required in connection with the operation of the Business. The Acquired Entities have implemented and maintained commercially reasonable organizational, administrative, physical and technical safeguards designed to secure the IT Assets. To the knowledge of the Seller, none of the IT Assets contain any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” “ransomware,” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming, interfering with or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user’s consent.

Section 3.12. Privacy and Security.

(a) In connection with their collection, storage, transfer (including, without limitation, any transfer across national borders) and/or use of any personally identifiable information from any individuals, including, without limitation, any customers, prospective customers, employees and/or other third parties (collectively “Personal Information”), the Acquired Entities are and have been in compliance in all material respects with all applicable laws in all relevant jurisdictions, the Acquired Entities’ privacy policies and the requirements of any contract or codes of conduct to which the Acquired Entities are a party. The Acquired Entities are and have been in compliance in all material respects with all Laws relating to data loss, theft and breach of security notification obligations.

(b) The Acquired Entities have not experienced any material Security Breaches or material Security Incidents affecting Personal Information, and the Acquired Entities are not aware of any written notices or complaints from any Person regarding such a Security Breach or material Security Incident affecting Personal Information.

Section 3.13. Licenses and Permits. The Acquired Entities hold all licenses, permits, variances, registrations, qualifications, certifications, exemptions, franchises, authorizations, approvals and similar documents or authorities issued or granted by Governmental Entities (the “Licenses and Permits”) necessary to own, lease or operate their respective properties and to permit the continued lawful conduct of the Business in the manner now conducted, and all such Licenses and Permits are valid and in full force and effect, except as set forth on Section 3.13 of the Disclosure Schedules. The operations of the Acquired Entities are being, and for [REDACTED] [REDACTED] have been, conducted in a manner that complies with the terms or conditions of the Licenses and Permits. The consummation of the transactions contemplated by this Agreement will not result in the cancellation, modification, termination or suspension of any License and Permit.

Section 3.14. Compliance with Law. Except as set forth on Section 3.14 of the Disclosure Schedules, each Acquired Entity is and for [REDACTED] has been in compliance in all material respects with all applicable Laws.

Section 3.15. Litigation. Except as set forth on Section 3.15 of the Disclosure Schedules, there are no Actions pending or, to the knowledge of the Seller, threatened, of any nature, brought by or against the Seller (to the extent related to the Business) or any Acquired Entity, the assets, properties or rights of the Acquired Entities or the transactions contemplated by this Agreement, and there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting any Acquired Entity or any of its properties or assets.

Section 3.16. Contracts.

(a) Except as set forth on Section 3.16(a) of the Disclosure Schedules (such Contracts disclosed therein, the “Material Contracts”), no Acquired Entity is a party to any written:

(i) bonus, pension, profit sharing, retirement or other form of deferred compensation plan, other than as described in Section 3.17 of the Disclosure Schedules relating thereto;

(ii) Contract for the employment of any officer, individual employee or other person on a full-time basis or Contract for the retention of an individual on a consulting basis, regardless of whether such individual is a party to such consulting Contract, providing for base compensation in excess of [REDACTED]
[REDACTED]

(iii) agreement or indenture relating to Indebtedness and to the mortgaging, pledging or otherwise placing a Lien (other than Permitted Liens) on any assets of any Acquired Entity;

(iv) guaranty of any obligation for borrowed money or other material guaranty involving more than [REDACTED]

(v) lease, sublease or agreement under which it is lessee of, or holds or operates any personal property owned by any other party, for which the annual rental, or rental due over the remaining term of the agreement, exceeds [REDACTED]

(vi) lease or agreement under which it is lessor of or permits any third party to hold or operate any of its personal property, for which the annual rental, or rental due over the remaining term of the agreement, exceeds [REDACTED]

(vii) Contracts pursuant to which a third party grants any Acquired Entity the right or license to use any Intellectual Property owned by a third party, excluding (A) shrink-wrap and click wrap licenses and related service agreements for which the aggregate fees payable by any Acquired Entity in a [REDACTED] period do not exceed [REDACTED] and (B) Contracts entered into with employees in the ordinary course of business;

(viii) Contract pursuant to which any Acquired Entity grants to a third party the right or license to use any Company Intellectual Property and/or [REDACTED] and with an aggregate fee in excess of [REDACTED] excluding non-exclusive license agreements entered into in the ordinary course of business on any Acquired Entity's standard form without any modification to the Intellectual Property terms in such standard forms;

(ix) Contract or group of related Contracts with the same party (other than standard purchase orders or pricing agreements or programs) for the purchase by any Acquired Entity of products or services which provide for annual payments, or payment due over the remaining term of the Contract, in excess of [REDACTED]

(x) Contract or group of related Contracts with a customer (other than standard purchase orders or pricing agreements or programs) that provide for annual revenues, or payment due over the remaining term of the Contract, to any Acquired Entity in excess of [REDACTED]

(xi) agreement relating to any completed business acquisition or disposition by any Acquired Entity related to the sale or purchase of Equity Interests, assets or any real property since [REDACTED] or that has any remaining material Liabilities on the part of any Acquired Entity;

(xii) Contract which (A) materially prohibits any Acquired Entity from freely engaging in business anywhere in the world or (B) contains any restrictions pursuant to "paper barriers" (as such term is generally understood in the railroad industry), that are applicable to the Acquired Entity;

(xiii) Contract granting trackage rights, haulage rights or other rights to any Person to use or operate over the rail lines of the Acquired Entities or to any Acquired Entity to use or operate over the rail lines of any other Person; and

(xiv) Contracts related to the Real Property.

With respect to each Material Contract: (i) such Contract is a valid and binding agreement of the applicable Acquired Entity, enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy Laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies; (ii) no Acquired Entity is in breach or default in any material respect, nor has any Acquired Entity taken any action which, with notice or lapse of time, would constitute a breach or default in any material respect, or permit termination, material modification or acceleration, as applicable, under such Contract; and (iii) to the knowledge of the Seller, no other party is in breach or default in any material respect under such Contract. True and complete copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) has been made available to Buyer.

Section 3.17. Employee Plans.

(a) Except as set forth on Section 3.17(a) of the Disclosure Schedules, and other than any individual employment offer letters or individual employment agreements providing for "at will" employment and that do not provide for the payment of severance, none of the Acquired Entities or any of their ERISA Affiliates maintains or contributes to any "employee benefit plan" (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) or other employee benefit plan, program or arrangement (collectively referred to as the "Plans"). Each of the Plans that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS or is a prototype plan that is entitled to rely on an opinion or advisory letter issued by the IRS to the prototype plan sponsor regarding qualification of the form of the prototype plan. The Plans comply in form and in operation in all material respects with their terms and in all material respects with the requirements of the Code and ERISA.

(b) The Seller has made available to Buyer true and complete copies of each Plan (including all amendments thereto), all current trust agreements, insurance Contracts or any other funding instruments related to the Plans, the [REDACTED] actuarial and financial reports, [REDACTED] summary plan description for each Plan and copies of all IRS determination, opinion or advisory letters in the case of any Plans intended to qualify under Section 401(a) of the Code.

(c) There are no Actions pending or, to the Seller's knowledge, threatened with respect to any Plan or any fiduciary or assets thereof. No Plan is currently under audit or review by any applicable Governmental Entity.

(d) There have been no non-exempt prohibited transactions as defined in Section 4975 of the Code or ERISA Section 406 with respect to any Plan.

(e) Each Acquired Entity and each ERISA Affiliate has made all required contributions or payments and paid in full all required insurance premiums and other required payments with regard to the Plans for policy or plan years or other applicable periods ending on or before the Closing Date, in each case, to the extent due or owing on or before the Closing Date, and all Liabilities of each Acquired Entity and each ERISA Affiliate which have been incurred but

will not be due and owing as of the Closing Date will be reflected in the Closing Working Capital Statement.

(f) Neither the Acquired Entities nor any ERISA Affiliate or Plan has incurred any Liability under Sections 4971 through 4980H, 6055 or 6056 of the Code. No Plan provides post-termination or retiree life insurance, health or welfare benefits to any Person, except as may be required by Section 4980B of the Code or any similar state Law.

(g) Neither the Acquired Entities nor any ERISA Affiliate has ever maintained, sponsored, participated in or contributed to, or could have any Liability with respect to, (i) any multiemployer plan as defined in Section 3(37) of ERISA, (ii) a “multiple employer plan” (as defined in Section 4063 or Section 4064 of ERISA), (iii) a defined benefit pension plan or a plan subject to Section 302 of Title 1 of ERISA, Section 412 of the Code or Title IV of ERISA, or (iv) a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA).

(h) Each Plan that is a “nonqualified deferred compensation plan” (as defined in Section 409A(d)(1) of the Code) has at all times been in documentary and operational material compliance with Section 409A of the Code and all applicable guidance promulgated thereunder. The Acquired Entities have no obligation, under a Plan or otherwise, to provide for a gross-up on any Taxes which may be imposed under Section 409A of the Code.

(i) Neither the execution or delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in connection with any other event, whether contingent or otherwise) will: (i) entitle any current or former employee, officer or other individual service provider of any Acquired Entity to any payment, forgiveness of Indebtedness, vesting, distribution, or increase in benefits or compensation under or with respect to any Plan; (ii) result in any acceleration (of vesting or payment of benefits or compensation or otherwise) under or with respect to any Plan; (iii) trigger any obligation to fund any Plan; or (iv) result in any Plan or any other Contract to which the Acquired Entities are a party providing for the payment of any amount which would not be deductible by reason of Section 280G of the Code. The Acquired Entities have no obligation, under a Plan or otherwise, to provide for a gross-up on any Taxes which may be imposed under Section 4999 or 280G of the Code.

(j) The Acquired Entities are in compliance in all material respects with the requirements of the Railroad Retirement Act of 1974 and the applicable regulations of the United States Railroad Retirement Board.

Section 3.18. Insurance. Prior to the date hereof, the Seller has furnished to the Buyer a true, complete and accurate original or copy of each policy or other certificate of title, liability, fire, casualty, business interruption, workers’ compensation and other forms of insurance insuring the Business, the Acquired Entities and their respective assets and operations (the “Existing Policies”). Section 3.18 of the Disclosure Schedules sets forth a list, as of the date hereof, of all such Existing Policies. All of the Existing Policies (a) are in full force and effect, and have been in full force and effect, without interruption, at all times for [REDACTED] (b) have no outstanding premiums due thereunder that have not been paid and (c) to the knowledge of the Seller, no Acquired Entity is in material default with respect to its obligations under any such insurance policy. Except as set forth on Section 3.18 of the Disclosure Schedules, no Acquired

Entity maintains any self-insurance or co-insurance programs. Except as set forth in Section 3.18 of the Disclosure Schedules, there are no claims related to the Business pending under any such insurance policies as to which, to the knowledge of the Seller, coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

Section 3.19. Transactions with Directors, Officers and Affiliates. Except as set forth on Section 3.19 of the Disclosure Schedules, none of the Acquired Entities, on the one hand, is a party to any Contract, agreement, arrangement or transaction with the Seller, any of its Affiliates (other than the Acquired Entities), or any of its or their respective directors, employees, officers, equityholders or family members, on the other (each, an “Affiliate Transaction”). There is no Indebtedness owed to any of the Acquired Entities by any employee, consultant, officer or director of the Seller or of any Acquired Entity, other than salary advances and advances of travel expenses in the ordinary course of business consistent with past practice.

Section 3.20. Labor Matters.

(a) Section 3.20(a) of the Disclosure Schedules sets forth a true and complete listing of all employees of each Acquired Entity as of the date hereof that sets forth for each such employee the following: (i) name or unique identifier, to the extent permitted under applicable Law; (ii) job title; (iii) employing entity; (iv) annual base salary or hourly rate (as applicable); (v) other cash compensation (including any bonuses and commissions); (vi) location of employment (city, state); (vii) full-time, part-time, or temporary status; (viii) classification as exempt or non-exempt under the Fair Labor Standards Act; (ix) date of hire and continuous service date (if different); (x) leave status (including leave type, date leave began, and anticipated return to work date, if known); and (xi) visa status and expiration date.

(b) Each Acquired Entity is, and has been for [REDACTED] in material compliance with all federal and state Laws respecting employment and employment practices, including applicable Laws which relate to wages, hours, wage payment, pay equity, employee record keeping, labor, employment, fair employment practices, terms and conditions of employment, workers’ compensation, occupational safety and health, plant closings, mass layoffs, withholding of Taxes, discrimination in employment, disability rights or benefits, equal employment opportunity, immigration (including applicable I-9 Laws), reasonable accommodations, labor relations and collective bargaining, employee leave issues, the use, termination, or classification of employees or independent contractors and other service providers (either as exempt or non-exempt or as employee versus independent contractor), and unemployment insurance, and are not liable for any arrears of wages or any Taxes or penalties for failure to comply with the foregoing. Except as set forth on Section 3.20(b) of the Disclosure Schedules, there is no pending nor to the knowledge of the Seller are there any threatened claim or investigation in respect of any such applicable Laws (including any employment discrimination charge or employment-related multi-claimant or class action claims), nor, to the knowledge of the Seller is there any basis therefor.

(c) No Acquired Entity is or has been a party to, is or has been bound by, is or has been negotiating, or has been asked to negotiate any collective bargaining agreement, Contract or other agreement or understanding with a labor union or labor organization. There is not currently, nor has there been, any organized effort by any labor union to organize any employees

of the Acquired Entities into one or more collective bargaining units. No Acquired Entity has been a party to, and they are not affected by or threatened with, any dispute or controversy with a labor union or with respect to unionization or collective bargaining involving any of their current or former employees (including any actual or threatened labor strike, dispute, walkout, work stoppage, slow-down, lockout, interruption of work, picketing, arbitration, grievance, unfair labor practice charge or proceeding, or other dispute involving a labor organization or with respect to unionization or collective bargaining), and none are pending, or to the knowledge of the Seller, threatened.

(d) Within [REDACTED], no Acquired Entity has experienced or been affected by any layoff of employees or facility closing under the meaning of the Worker Adjustment and Retraining Notification Act, as amended, or any similar state or local mass layoff or plant closing Law (“WARN”) or has taken any action that would require notification of any current or former employees of any Acquired Entity pursuant to WARN or that would cause any Acquired Entity to have any Liability thereunder.

(e) Except as would not result in material Liability to any Acquired Entity, all Persons classified or treated by the Acquired Entities as (i) independent contractors or otherwise as non-employees, or (ii) as exempt from overtime under the Fair Labor Standards Act, satisfy, and in [REDACTED], have satisfied all applicable Laws to be so classified or treated.

(f) In [REDACTED] (i) no allegations of sexual harassment, or sexual misconduct have been made against any (A) officer, member or director of any Acquired Entity, or (B) any current or former employee or any service providers of any Acquired Entity, and (ii) no Acquired Entity has entered into any settlement agreement or conducted any investigation related to allegations of sexual harassment or sexual misconduct by an employee, contractor, director, member, officer, or other representative of any Acquired Entity.

Section 3.21. Environmental Matters. Except as set forth on Section 3.21 of the Disclosure Schedules:

(a) Except as stated in Section 3.21(a) of the Disclosure Schedules, each Acquired Entity is, and for [REDACTED] has been, in compliance with all applicable Environmental Laws.

(b) Except as stated in Section 3.21(b) of the Disclosure Schedules, each Acquired Entity has obtained and possesses all Environmental Permits required by Environmental Laws to own or operate its facilities and other assets and to conduct its business and is, and for [REDACTED] has been, in compliance with such Environmental Permits. All such Environmental Permits are in full force and effect in accordance with Environmental Law and are identified in Section 3.21(b) of the Disclosure Schedules. No Acquired Entity has received a written notice threatening to revoke, modify, cancel or terminate any such Environmental Permits. A timely and complete renewal application has been filed for any such Environmental Permit that will expire within [REDACTED]. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by it do not and will not require any notice to, or approval or other consent from, any Governmental Entity for the

Environmental Permits possessed by each Acquired Entity to remain in full force and effect after Closing.

(c) No Acquired Entity has received any (i) Environmental Notice or Environmental Claim, or (ii) written request for information pursuant to Environmental Law, in each case relating to any Acquired Entity, its operations or the Real Property and arising under Environmental Laws, the subject of which is unresolved. To the knowledge of Seller, there are no Environmental Claims threatened against the Seller (to the extent related to the Business) or any Acquired Entity.

(d) Neither the Seller (to the extent related to the Business) nor any Acquired Entity is subject to any judgment, order or decree of any court or other Governmental Entity, or any settlement or consent agreement, that is outstanding and was issued or entered pursuant to or in connection with Environmental Laws.

(e) There is no condition, event or circumstance relating to Environmental Laws or Hazardous Materials that would reasonably be expected to prevent or impede, after the Closing, the ownership, lease, operation or use of the Business or assets of the Acquired Entities in any material respect as currently carried out, or that would reasonably be expected to result in material Liability.

(f) No real property currently, or to the knowledge of Seller, formerly, owned, operated or leased by any of the Acquired Entities is listed on, or has been proposed for listing on, the National Priorities List or Superfund Enterprise Management System under the federal Comprehensive Environmental Response, Compensation or Liability Act, or any similar state list.

(g) There are no underground storage tanks, landfills, or disposal areas located on the Real Property.

(h) There has been no Release of any Hazardous Material by Seller or the Acquired Entities or, to the knowledge of Seller, any other Person, at, in, under, from, on or migrating to (i) the Real Property, or any other property currently operated by the Acquired Entities; (ii) any property formerly owned, leased or operated by the Acquired Entities, or (iii) at any off-site location to which Hazardous Materials generated by any Acquired Entity were sent for treatment, recycling, storage or disposal, in the case of each of clauses (i)-(iii), in violation of Environmental Law or in a manner that would reasonably be expected to result in Liability to the applicable Acquired Entity pursuant to Environmental Law.

(i) No Acquired Entity has assumed by Contract, or, to Seller's knowledge by operation of Law, any Liability of a third party arising under or related to any Environmental Law or Hazardous Material.

(j) The Seller has made available to Buyer true and correct copies of all environmental reports, assessments, audits, notices of violations, Environmental Permits, and all other material environmental documents pertaining to the Acquired Entities and their respective operations, or their respective Real Property or other assets, or to any property formerly owned, leased or operated by any Acquired Entity, that are in the possession or control of Seller or any Acquired Entity.

Section 3.22. Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Seller for which Buyer or any Acquired Entity would be liable.

Section 3.23. Absence of Unlawful Payments; Sanctions.

(a) Neither the Seller nor any Acquired Entity, nor any director or officer of the Seller or any Acquired Entity, nor any employee, agent or other Person acting on behalf of the Seller or any Acquired Entity: (i) has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment to officials or employees of any Governmental Entity; (ii) made any unlawful offers or expenditures relating to political activity to officials or employees of any Governmental Entity; or (iii) made any direct or indirect unlawful offer or payment of anything of value to any Person to improperly influence official action or secure an improper advantage, or otherwise violated any Anti-Corruption Laws.

(b) Neither the Seller nor any Acquired Entity is party to, or the subject of, any actual or threatened legal proceedings or outstanding enforcement Action related to Anti-Corruption Laws.

(c) The Seller, the Acquired Entities, and their respective directors and officers, and to the knowledge of the Seller, their respective employees, agents, or any other Persons authorized to act, or acting, on behalf of the foregoing, are, and [REDACTED] have been, in compliance with applicable Sanctions and Ex-Im Laws. Neither the Seller, nor any Acquired Entity, nor any of their respective directors, officers, or, to the knowledge of the Seller, any employees, agents, or any other Persons authorized to act, or acting, on behalf of the Seller or the Acquired Entities, (i) is a Sanctioned Person or (ii) has, [REDACTED] directly or indirectly, engaged in any dealings with or involving any Sanctioned Person or Sanctioned Country. Neither the Seller nor any Acquired Entity has made any disclosure or received any allegation, inquiry, notice or communication that alleges that the Seller or such Acquired Entity, or any representative or other Person acting for or on behalf of the Seller or such Acquired Entity may have violated any Sanctions or Ex-Im Laws, and, to the knowledge of the Seller, the Seller and Acquired Entities are not aware of any such circumstances presently in existence likely to give rise to any such allegation, inquiry, notice or communication.

Section 3.24. Campaign Finance Matters.

(a) The Seller and each Acquired Entity is, and for [REDACTED] has been, in compliance in all material respects with all applicable Campaign Finance Laws.

(b) Neither the Seller nor any Acquired Entity has received any written notice from or is subject to any Action or threatened Action of any Governmental Entity or other Person alleging that the Seller or Acquired Entity (i) may be, or may have been, in material violation of any Campaign Finance Laws, or (ii) may have any Liabilities arising under any applicable Campaign Finance Laws, the subject of which is in each case unresolved.

Section 3.25. Lobbying Matters.

(a) [REDACTED] neither the Seller nor any Acquired Entity has engaged in any activity that constitutes lobbying under the applicable Lobbying Laws of any jurisdiction, whether directly or through the acts of its officers, employees, agents, or any other Person acting on its behalf.

(b) The Seller and each Acquired Entity is, and [REDACTED] has been, in compliance in all material respects with all applicable Lobbying Laws.

(c) Neither the Seller nor any Acquired Entity has received any written notice from or is subject to any Action or threatened Action of any Governmental Entity or other Person alleging that the Seller or Acquired Entity (i) may be, or may have been, in material violation of any Lobbying Law, or (ii) may have any material Liabilities arising under any applicable Lobbying Law, the subject of which is in each case unresolved.

Section 3.26. Government Grants. Section 3.26 of the Disclosure Schedules sets forth a true and complete list of all Government Grants, which list includes with respect to each Government Grant, the original amount of such Government Grant and the amount of the funds (if any) that have been received by the Acquired Entities with respect to such Grant. No Acquired Entity is in breach or default in any material respect, nor has any Acquired Entity taken any action which, with notice or lapse of time, would constitute a breach or default in any material respect, or permit termination, material modification, as applicable, under and Government Grant. True and complete copies of all documents related to each Government Grant have been made available to Buyer.

ARTICLE 4.

REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby represents and warrants to the Seller as follows:

Section 4.1. Corporate Organization; Authorization and Validity. The Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware and has all necessary power and authority to own its properties, rights and assets and to conduct its business as now conducted and is duly licensed or qualified to do business as a foreign limited liability company and is in good standing in each jurisdiction in which the character of the properties, rights and assets owned, licensed or leased by it or the nature of the business conducted by it makes such licensing or qualification necessary or desirable, except where the failure to be so licensed or qualified and in good standing would not, individually or in the aggregate, materially impair the ability of the Buyer to perform any of its obligations under this Agreement. The Buyer has the requisite power and authority to enter into and deliver this Agreement and the Ancillary Agreements to which the Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Buyer of this Agreement and the Ancillary Agreements to which Buyer is a party and the performance by the Buyer of its obligations hereunder and thereunder have been duly authorized by all necessary action by the governing body or Person of the Buyer, and no other actions on the part of the Buyer are necessary to authorize such execution, delivery

and performance. The Buyer has duly executed and delivered this Agreement and the Ancillary Agreements to which Buyer is a party and, assuming the due authorization, execution and delivery of this Agreement and the Ancillary Agreements by the other parties thereto, this Agreement and such Ancillary Agreements constitute the Buyer's valid and binding obligation enforceable against the Buyer in accordance with its terms.

Section 4.2. No Conflict or Violation. The execution, delivery and performance by the Buyer of this Agreement and the Ancillary Agreements to which it is a party and the transactions contemplated hereby and thereby do not and will not (a) violate or conflict with any provision of the Organizational Documents of the Buyer, (b) assuming each of the STB Approval and the FCC Approval has been obtained, violate any order, judgment or decree of any Governmental Entity applicable to the Buyer or (c) violate, conflict with or result in a breach of or constitute (with due notice or lapse of time or both) a default, termination or right of termination under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Buyer is a party or by which it is bound or to which any of its properties, rights or assets is subject, or result in the acceleration of any Indebtedness created thereunder or give rise to a right thereunder to require any payment to be made by the Buyer, or result in the creation or imposition of any Lien upon any of the assets, properties or rights of the Buyer, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on the Buyer's ability to consummate the transactions contemplated hereby.

Section 4.3. Consents and Approvals. Neither the execution and delivery by the Buyer of this Agreement and the Ancillary Agreements to which the Buyer is a party, nor the consummation of the transactions contemplated hereby and thereby by the Buyer require any consent, waiver, approval, license, authorization or permit of, or filing with or notification to, any Person, except for (a) the STB Approval, (b) the FCC Approval, and (c) as set forth on Section 4.3 of the Disclosure Schedules.

Section 4.4. Brokers. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Buyer for which the Seller would be liable.

Section 4.5. Financial Ability. The Buyer will have at the Closing sufficient cash to enable it to pay the Purchase Price as and when it becomes due. Notwithstanding anything in this Section 4.5 or elsewhere in this Agreement to the contrary, the Buyer affirms that it is not a condition to the Closing or to any of its obligations under this Agreement that it obtains financing for or related to any of the transactions contemplated by this Agreement.

Section 4.6. Investment Representation; Independent Investigation.

(a) The Buyer is acquiring the Purchased Equity for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities laws.

(b) The Buyer has conducted its own independent investigation, review and analysis of the Business, the results of operations, prospects, condition (financial and otherwise) and assets of the Acquired Entities, and acknowledges that it has been provided access to the personnel, properties, assets, premises, books and records, and other documents and data of the Acquired Entities for such purpose. The Buyer acknowledges and agrees that: (i) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, the Buyer has relied solely upon its own investigation and the express representations and warranties of the Seller set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedules); and (ii) neither the Seller, any Acquired Entity nor any other Person has made any representation or warranty as to the Seller, any Acquired Entity or this Agreement, except as expressly set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedules).

ARTICLE 5.
COVENANTS OF THE SELLER

The Seller hereby covenants as follows:

Section 5.1. Conduct of Business Before the Closing Date.

(a) During the period from the date of this Agreement to the Closing, except as otherwise expressly provided in this Agreement, the Seller shall cause the Acquired Entities to conduct business only in the ordinary course consistent with past practice and in compliance in all material respects with applicable Laws. The Seller shall use its commercially reasonable efforts to maintain and preserve intact the Acquired Entities' assets, the present organization of the Acquired Entities (except to the extent required to effectuate the Pre-Transaction Restructuring in accordance with this Agreement), the Business, keep available the services of the present officers and employees of the Acquired Entities and preserve relationships with customers, suppliers, vendors, licensors, licensees, contractors, distributors and others having business dealings with the Acquired Entities. Without limiting the generality of the foregoing and except as set forth on Section 5.1(a) of the Disclosure Schedules, from the date of this Agreement to the Closing, the Seller shall not permit the Acquired Entities to, and the Acquired Entities shall not, in each case, without the prior written consent of the Buyer:

(i) mortgage, pledge or subject to any material Lien, any material portion of its assets or properties, except Permitted Liens;

(ii) sell, assign or transfer any of its tangible assets, other than sales in the ordinary course of business;

(iii) acquire by merger or consolidate with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(iv) adopt any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(v) sell, assign, transfer, lease, abandon, allow to lapse or expire, or license any material Intellectual Property other than licenses granted in the ordinary course of business;

(vi) enter into any Affiliate Transaction;

(vii) issue, sell or transfer any of its Equity Interests or warrants, options or other rights to acquire its Equity Interests or declare, set aside or pay any non-cash dividend or made any non-tax distribution with respect to its equity securities or redeemed, purchased or otherwise acquired any of its equity securities;

(viii) make any loan to, or enter into any other material transaction with, any of its Affiliates, the members of its board of directors or its executive officers;

(ix) hire any employee or individual consultant with an annualized base salary in excess of [REDACTED], or terminate or transfer any employee other than for cause as determined by the Acquired Entity in its reasonable good faith discretion in accordance with applicable Law;

(x) enter into any deferred compensation, severance, non-competition or similar agreement (or amend any such agreement) to which any of the Acquired Entities is a party;

(xi) enter into any employment, consulting, change in control, severance, termination or retention agreements with any employees, officers, directors, or consultants of the Acquired Entities;

(xii) contract with or otherwise engage any individual independent contractor with expected payments to exceed [REDACTED] per year on an annualized basis or terminate the engagement of any individual independent contractor other than due to breach by such Person of his, her, its or their agreement with any of the Acquired Entities;

(xiii) make any change in employment or consulting terms (including the amount of the wages, salaries, bonuses, commissions, fringe benefits or other compensation and benefits) for any of its directors or executive officers or for any employees or individual consultants having employment or consulting Contracts with annual compensation exceeding or projected to exceed [REDACTED] [REDACTED] (except for the grant and payment of any Transaction Bonus payments in connection with the consummation of the transactions contemplated by this Agreement);

(xiv) increase the coverage or benefits available under any (or create any new) severance pay, vacation pay, salary continuation for disability, sick leave, deferred compensation, bonus or other incentive compensation, insurance, pension or other employee benefit plan or arrangement made to, for or with any employees or other service providers of the Acquired Entities;

(xv) fund, or make any commitment to fund, any compensation obligation (whether by grantor trust or otherwise);

(xvi) adopt, amend or terminate any Plan or agree to provide any compensation or benefits pursuant to any plan, agreement or arrangement that would constitute a Plan if adopted;

(xvii) grant recognition to any labor union except as required by Law, enter into any new collective bargaining agreements, or materially amend any collective bargaining agreements;

(xviii) modify, waive or decline to enforce any non-competition, non-solicitation, confidentiality or similar obligation of any employee;

(xix) make any communication to any employee of the Acquired Entities regarding compensation or benefits to be provided after the Closing;

(xx) make any material capital investment in, or any material loan to, any other Person other than as set forth in capital expenditure budgets of an Acquired Entity;

(xxi) make any capital expenditures (or commitments therefor), except in the ordinary course of business or pursuant to the terms of the Government Grants;

(xxii) effect any split, recapitalization, reclassification or similar change in the capitalization of any Acquired Entity, except to the extent required to effectuate the Pre-Transaction Restructuring in accordance with this Agreement;

(xxiii) effect any amendments to any Organizational Document of any Acquired Entity, except to the extent required to effectuate the Pre-Transaction Restructuring in accordance with this Agreement;

(xxiv) fail to comply with any Law in any material respect or with its material obligations under any Material Contract or Government Grant;

(xxv) fail to maintain its books and records in accordance with past practices;

(xxvi) voluntarily accelerate or decelerate any of the Acquired Entities' accounts receivables or accounts payable or otherwise operate the Business outside of the ordinary course of business as it relates to accounts receivable and accounts payable;

(xxvii) modify, amend, or terminate any Existing Policy;

(xxviii) enter into, modify, amend or terminate any Material Contract or Government Grant;

(xxix) take any action that would result in the cancellation, modification, termination or suspension of any License and Permit.

(xxx) stop payment on any undisputed debt, Taxes and other obligations when due;

(xxxi) create, incur, assume or guarantee or otherwise become responsible for any Indebtedness applicable to any Acquired Entities, in each case, except in the ordinary course of business consistent with past practice;

(xxxii) make any material change in any method of accounting or accounting practice of any Acquired Entity, except as required by GAAP or applicable Law or as disclosed in the notes to the Financial Statements;

(xxxiii) except to the extent required to effectuate the Pre-Transaction Restructuring in accordance with this Agreement, make or change any Tax election or method of accounting or reporting for Tax purposes, file any amended Tax Return, enter into any closing agreement, settle any Tax claim, assessment or audit, surrender any right to claim a refund of Taxes, extend or waive the limitation period applicable to any Tax claim or assessment or changed accounting bases, practices, policies or procedures;

(xxxiv) discontinue operations on a rail line under circumstances that will result in a Liability to refund grant receipts;

(xxxv) grant trackage rights, haulage rights or other rights to use or operate over the rail lines of the Acquired Entities; or

(xxxvi) enter into any agreement or commit to do, or resolve, authorize or approve any of the foregoing, or any action or omission that would result in any of the foregoing.

(b) During the period from the date hereof to the Closing Date, the Seller shall cause the Acquired Entities to (i) prepare and timely file all Tax Returns (“Post-Signing Returns”) required to be filed (taking into account any valid extensions obtained in the ordinary course of business) in a manner consistent with the past practice of the applicable Acquired Entity, (ii) timely pay all Taxes due and payable, whether or not shown on such Post-Signing Returns, and (iii) promptly notify the Buyer of any written notice of Action pending against or with respect to an Acquired Entity in respect of any Tax matters (or any significant developments with respect to ongoing Actions in respect of Tax matters).

Section 5.2. Consents and Approvals.

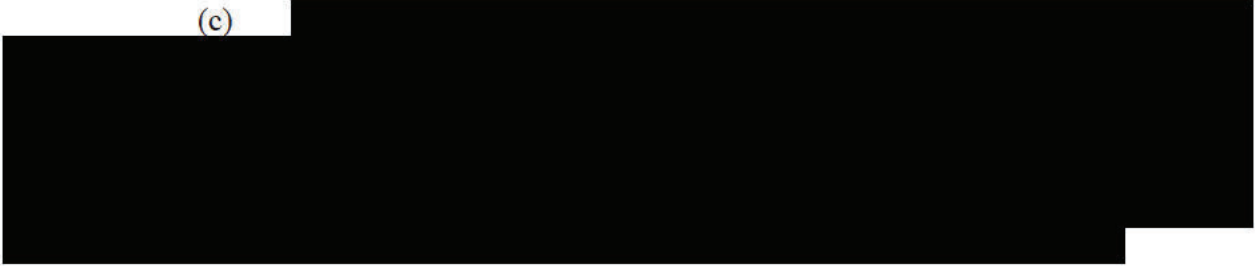
(a)



(b)



(c)



(d)



Section 5.3. Access to Properties and Records. The Seller shall, and shall cause the Acquired Entities to, (a) afford to the Buyer, and to the accountants, counsel, consultants and other representatives of the Buyer, upon reasonable prior notice, access during normal business hours throughout the period prior to the Closing Date to all properties, assets, books, Contracts, commitments, title insurance policies currently in effect with respect to the Owned Real Property and files and records of the Acquired Entities, (b) furnish to the Buyer and its representatives such financial, operating and other data and information related to any Acquired Entity as Buyer or any of its representatives may reasonably request; and (c) instruct its representatives and the Acquired Entities to cooperate with the Buyer in its investigation of any Acquired Entity, and, during such

period, shall furnish promptly to the Buyer all other information concerning the Acquired Entities and their respective properties and personnel as the Buyer may from time to time reasonably request; provided, however, that any such access shall be conducted at a reasonable time and in such a manner as not to interfere unreasonably with the operations of the Business of the Acquired Entities and neither the Buyer nor its representatives shall perform environmental testing activities or otherwise disturb the Real Property, in each instance, without the prior written consent of the Seller. Notwithstanding the foregoing, none of the Acquired Entities shall be required to disclose any information to the Buyer or their authorized representatives if doing so would violate any Law to which such Acquired Entity is subject.

Section 5.4. Commercially Reasonable Efforts.

Section 5.5.

(a)

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

Section 5.6. Termination of Affiliate Transactions.

(a) Prior to the Closing, the Seller shall cause any Contract or arrangement that is disclosed in Section 3.19 of the Disclosure Schedules to be terminated or otherwise amended to exclude the Acquired Entities as a party thereto.

(b) Immediately prior to the consummation of the Closing, the Seller shall contribute, or cause to be contributed, to the capital of each Acquired Entity, the difference between (i) the intercompany Indebtedness owed by such Acquired Entity to the Seller and their Affiliates (other than the other Acquired Entities) as of the Closing and (ii) the intercompany Indebtedness owed by the Seller and its Affiliates (other than the other Acquired Entities) to such Acquired Entity as of the Closing, and all such intercompany Indebtedness shall cease to exist and be of no further force or effect.

(c) Prior to the Closing, all intercompany Liabilities (other than those addressed in the preceding clauses (a) and (b)) owed to the Seller or its Affiliates (other than an Acquired Entity), on the one hand, by any Acquired Entity, on the other hand, shall be settled or otherwise eliminated, shall cease to exist and shall be of no further force or effect.

Section 5.7. Pre-Transaction Restructuring. Prior to the Closing, the Seller shall cause (a) PVR Corp to convert into a Nevada limited liability company pursuant to the Laws of the State of Nevada and (b) RDS Corp to convert into a Massachusetts limited liability company pursuant to the Laws of the Commonwealth of Massachusetts (collectively, the “Pre-Transaction Restructuring”).

Section 5.8. Insurance. The Seller shall not take any action or omit taking any action that would reasonably be expected to (a) result in a loss of coverage under any of the Existing Policies, or (b) be adverse to the ability of the Acquired Entities to have the benefit of the Existing Policies following the Closing. In addition, the Seller shall or shall cause the Acquired Entities to notify the carriers under the Existing Policies of all matters of which the Seller has or obtains knowledge at or prior to Closing that would give rise to claims covered under the Existing Policies (with such notice to be given as soon as reasonably practicable upon obtaining such knowledge). From and after the Closing, the Seller and its Affiliates shall cooperate with and permit the Acquired Entities to seek and obtain coverage under each of the Existing Policies for occurrences that took place prior to the Closing, and the Seller and its Affiliates shall not release, commute, buy-back, or otherwise eliminate the coverage available to the Acquired Entities or the Business under any such Existing Policy.

Section 5.9. Risk of Loss. The risk of loss or damage by fire or other casualty to any Real Property or any other assets of the Acquired Entities before Closing is assumed by the Seller. In the event that any Real Property or any other assets of the Acquired Entities shall suffer any such loss or damage, the Seller agrees to, at the Buyer’s election, (a) repair the damage at Seller’s sole cost and expense before the Closing to the extent the insurance proceeds are available for such purpose, (b) make an appropriate reduction in the Purchase Price based on a reasonable approximation of the cost of such repair as agreed by the parties or (c) irrevocably assign to the Buyer the right to the proceeds of any insurances covering such fire, casualty or injury; provided,

however, that in the case of clauses (a) and (b) in the preceding sentence, the Buyer shall assign to the Seller its rights or the rights of the Acquired Entity, if any, to receive such insurance proceeds up to the amount of costs incurred by Seller (in the case of clause (a)) or the amount of the reduction in Purchase Price (in the case of clause (b)).

Section 5.10. Resignation of Officers and Directors. Effective as of the Closing Date, the Seller shall either cause the directors and officers of the Acquired Entities to resign or remove them from such positions. The Seller shall deliver such written resignations to the Buyer at Closing.

Section 5.11. [REDACTED].

(a)

(b)

(c)

(d)

Section 5.12. Treatment of Plans. The Seller shall retain sponsorship of, shall remain solely responsible for and shall retain all liabilities, obligations and commitments under, the Plans, whether arising before, on or after the Closing, and Buyer shall not assume sponsorship of, contribute to or maintain, or have any responsibility, liability, obligation or commitment with respect to, the Plans, except to the extent that Buyer elects prior to Closing to continue any of the Plans applicable to employees of the Acquired Entities, as determined by Buyer in its sole discretion. In addition, Seller shall take all actions necessary or appropriate to (a) ensure that, under the terms of any Plan that is intended to qualify under Section 401(a) of the Code (the “401(a) Plans”), each Continuing Employee is eligible to receive a distribution from the 401(a) Plans as a result of the Closing, and (b) remove the Acquired Entities as participating employers in the 401(a) Plans effective as of the Closing Date. Seller shall use commercially reasonable efforts to take all actions necessary to permit the rollover in cash of account balances of Continuing Employees from the 401(a) Plans to a similar plan at Buyer or its designated Affiliate, at the participants’ election.

Section 5.13. Further Assurances; Personal Items. From time to time after the Closing, without additional consideration, each of the parties hereto will (or, if appropriate, cause their Affiliates to) execute and deliver such further instruments and take such other action as may be necessary to make effective the transactions contemplated by this Agreement. If any party to this Agreement shall following the Closing have in its possession any asset or right that under this Agreement should have been delivered to the other, such party shall promptly deliver such asset or right to the other. The Buyer agrees that the Seller shall be entitled to remove from the offices of the Acquired Entities photographs, plaques, and personal items so long as such items are not required for, or are used in, the operation of the Business, as currently conducted.

Section 5.14. Release by the Seller. As of the Closing, the Seller on behalf of itself and its Affiliates and its and their respective stockholders, successors and assigns (in each case, solely in their capacity as such) (each, a “Releasing Person”) hereby unconditionally release and

forever discharge the Buyer, the Buyer Group and the Acquired Entities, from all debts, demands, causes of action, suits, covenants, torts, damages and any and all claims, defenses, offsets, judgments, demands and Liabilities whatsoever, of every name and nature, both at law and in equity, known or unknown, accrued or unaccrued that have been or could have been asserted against any Acquired Entity, which any Releasing Person has or ever had, which arises out of or in any way relates to events, circumstances or actions occurring, existing or taken prior to or as of the Closing Date in respect of matters related to any of the Acquired Entities (including any intercompany Liabilities owed to the Seller or its Affiliates (other than an Acquired Entity), on the one hand, by any Acquired Entity); provided, however, that the Seller and the Buyer acknowledge and agree that this Section 5.14 does not apply to and shall not constitute a release of any rights or obligations arising under this Agreement that by their terms survive the Closing.

Section 5.15. FCC Radio License. The Buyer and the Seller shall, and prior to the Closing the Seller shall cause PVRR to, cooperate to file the required application to obtain the consent of the FCC pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948 for the transfer of control of the radio license authorization held by PVRR under call sign WQVA658. Promptly following execution of this Agreement, the Seller shall initiate the electronic filing of FCC Form 603, "FCC Application for Assignments of Authorization or Transfers of Control," through the FCC's Universal Licensing System, and shall be responsible for the filing fees associated with such application. The Buyer shall electronically approve and sign the FCC Form 603 application through the Universal Licensing System and shall, within thirty (30) calendar days after the Closing Date, notify the FCC of the consummation of the transfer of control through the filing of FCC Form 603, Schedule D.

Section 5.16. Post-Closing Receipts. From and after Closing, in the event Seller or any of its Affiliates receives or collects any funds, including with respect to any Current Assets, that belong to any Acquired Entity, Seller or its Affiliate shall remit such funds to Buyer within [REDACTED] after its receipt thereof.

ARTICLE 6. COVENANTS OF THE BUYER

The Buyer hereby covenants as follows:

Section 6.1. Consents and Approvals.

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

Section 6.2. Certain Insurance Policies. The Buyer shall purchase [REDACTED] the RWI Policy, to be effective immediately following the Closing and shall provide a copy of such policy to the Seller.

Section 6.3. Bonus Payments. [REDACTED] the Buyer shall cause the Bonus Payments, including any and all withholding and applicable payroll or other Taxes, to be paid in full in accordance with Buyer's normal payroll practices.

Section 6.4. Post-Closing Employment Matters.

(a) [REDACTED]

[REDACTED] the Buyer shall, and shall cause the Acquired Entities to, provide each employee of the Acquired Entities who remains employed by the Acquired Entities immediately prior to the Closing (each, a "Company Continuing Employee") with: (i) base salary or hourly wages which are no less than the base salary or hourly wages provided by the Acquired Entities immediately prior to the Closing; (ii) target annual cash bonus opportunities, if any, which are no less than the target annual cash bonus opportunities provided by the Acquired Entities immediately prior to the Closing; and (iii) retirement and welfare benefits that are no less favorable in the aggregate to those provided by the Acquired Entities immediately prior to the Closing. With respect to any employee benefit plan maintained by Buyer or its Affiliates (each, a "Buyer Benefit Plan") in which any Company Continuing Employees will participate effective as of the Closing, the Buyer shall, or shall cause

the Acquired Entities to recognize all service of the Company Continuing Employees with the Acquired Entities for eligibility and vesting purposes only under any Buyer Benefit Plan (other than any defined benefit plan) in which such Company Continuing Employees may be eligible to participate after the Closing Date to the extent there is no duplication of benefits and only to the extent such service was recognized under Seller's Plan prior to the execution of this Agreement, as if such service were with the Buyer.

(b) Unless as otherwise provided under applicable Law or as expressly provided in this Agreement, nothing in this Section 6.4 or elsewhere in this Agreement shall be deemed to confer upon any other Person any rights or remedies hereunder or make any employee or other service provider of the parties a third party beneficiary of this Section 6.4, including, any rights of employment for any specified period and/or any employee benefits, in favor of any Person, union, association, employee, contractor or other entity, other than the parties hereto and their respective successors and permitted assigns. Nothing contained in this Section 6.4 shall be deemed to be the adoption of, or an amendment to, any employee benefit plan, program, arrangement, Contract or practice, or otherwise limit the right of Buyer to amend, modify or terminate any employee benefit plan, program, arrangement, Contract or practice, including but not limited to its travel or other policies.

(c) Nothing in this Section 6.4 shall obligate Buyer or the Acquired Entities to continue (and shall not prevent Buyer or the Acquired Entities from modifying or terminating) the employment of any Company Continuing Employee.

(d) In addition to the foregoing, at least [REDACTED] Buyer shall (or shall cause one of its Affiliate to), make a written offer of employment to each of [REDACTED] (collectively, the "Seller Employees"), in each case, that shall (i) be contingent on the Closing occurring, (ii) be subject to Buyer's or its applicable Affiliate's generally applicable background checks, drug screens, work authorization verification and similar requirements, (iii) provide for such Seller Employee to start employment with the Buyer or its applicable Affiliate as of [REDACTED], (iv) provide for a base salary or hourly base wage, as applicable, and target annual cash bonus opportunities that are no less favorable than such Seller Employee's base salary or hourly base wage and target bonus opportunities provided by Seller as of the date hereof, (v) retirement and welfare benefits that are no less favorable in the aggregate to those provided by the Seller immediately prior to the Closing and (vi) [REDACTED]

[REDACTED]. To the extent a Seller Employee accepts an offer of employment made pursuant to this Section 6.4(d) and commences such employment with Buyer or its applicable Affiliate, such Seller Employee shall be deemed to be a Company Continuing Employee for purposes of this Section 6.4 and Section 6.5.

Section 6.6.

Section 6.7. Government Grants. Following the Closing, the Buyer shall cause the Acquired Entities to continue to use commercially reasonable efforts to invest in capital improvements as contemplated by, and shall continue to comply with, all requirements of the Government Grants set forth in Section 3.26 of the Disclosure Schedules. The Buyer shall pay, or cause the Acquired Entities to pay to the Seller, within [REDACTED] following receipt of the same, all funds received by the Acquired Entities pursuant to any Government Grant set forth in Section 3.26 of the Disclosure Schedules as reimbursement for payments accrued or incurred by the Acquired Entities prior to the Closing for capital improvements contemplated by such Government Grant, net of any expenses or other costs of collection and Taxes, by wire transfer of immediately available funds to the account(s) designated in writing by the Seller.

Section 6.8. Use of Private Car.

[REDACTED] the Acquired Entities shall permit John Levine to use such private dining car up to two (2) times each calendar year at his sole cost and expense; provided that (a) John Levine shall provide advance written notice to Buyer and the Acquired Entities at least [REDACTED] before the requested date for such use, (b) the scheduling of such use of the private dining car will not interfere with the day-to-day business or operations of the Acquired Entities, (c) such use of the private dining car is limited to it being located on PVRP's track, and (d) the private dining car is in operable service (as determined by the Acquired Entities in their sole discretion). John Levine shall indemnify, defend and hold harmless Buyer, the Buyer Group and the Acquired Entities from and against any and all losses, damages, Liabilities, deficiencies, Actions, judgments, Taxes, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder) that Buyer, the Buyer Group or any of the Acquired Entities incurs in connection with any use of the private dining car as contemplated by this Section 6.8.

Section 6.9.

[REDACTED]

Section 6.10. Commercially Reasonable Efforts. Upon the terms and subject to the conditions of this Agreement, including Section 6.1, insofar as such matters are within the control of the Buyer, the Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to consummate and make effective the transactions contemplated hereby as soon as reasonably practicable.

ARTICLE 7. LIMITATIONS ON CLAIMS

Section 7.1. General. The covenants, agreements and obligations of the Seller and the Buyer contained in this Agreement shall be deemed to be fully performed and discharged in all respects upon the Closing, except only such covenants, agreements and obligations which, by the terms thereof, are to be performed after the Closing, which covenants, agreements and obligations will survive until fully performed in accordance with their terms.

Section 7.2. Representations and Warranties. Without limiting the generality of Section 7.1 above, the representations and warranties made by the Seller and the Buyer in Article 3 and Article 4 of this Agreement shall terminate on, and be of no further force or effect [REDACTED]. The Buyer has acknowledged its intention to obtain the RWI Policy to insure the Buyer against the risk of breach of any of the representations and warranties in Article 3. The Buyer covenants and agrees not to sue or make any claims against the Seller or any of its shareholders, directors, officers, trustees, Affiliates or its heirs, successors or assigns based on actual or alleged breach of the representations and warranties in Article 3. Notwithstanding anything to the contrary contained in any provision of this Agreement, nothing in this Agreement shall limit (x) any party hereto from seeking to recover any damages with respect to a claim for fraud or a willful breach of this Agreement, (y) any party hereto from seeking to specifically enforce, or seeking to recover any damages with respect to the breach of, any covenants to the extent such covenant by its terms contemplates performance after the Closing or (z) any party's rights and remedies with respect to the adjustment to the Estimated Purchase Price pursuant to Section 2.3.

Section 7.3. [REDACTED]

[REDACTED]

Section 7.4.

[REDACTED]

Section 7.5.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 7.6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 8.
CONDITIONS PRECEDENT TO PERFORMANCE BY THE SELLER

The obligations of the Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which (other than Section 8.3) may be waived (in writing) in whole or in part by the Seller in its sole discretion at or prior to the Closing Date:

Section 8.1. Representations and Warranties of the Buyer. All representations and warranties made by the Buyer in this Agreement shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by

materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by the Buyer on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by the Buyer that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date;

Section 8.2. Performance of the Obligations of the Buyer. The Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date.

Section 8.3. No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity which declares this Agreement invalid or unenforceable or which prevents the consummation of the transactions contemplated hereby shall be in effect.

Section 8.4. Closing Deliveries by the Buyer. At the Closing, the Buyer shall have delivered (or caused to be delivered) to the Seller:

- (a) the Closing Payment Amount by wire transfer in immediately available funds to the account designated by Seller in the Payment Spreadsheet;
- (b) a certificate of a duly authorized officer of the Buyer certifying as to the matters set forth in Sections 8.1 and 8.2;
- (c) the Assignment and Assumption Agreement, duly executed by Buyer; and
- (d) the Escrow Agreement, duly executed by Buyer and the Escrow Agent.

ARTICLE 9. CONDITIONS PRECEDENT TO PERFORMANCE BY THE BUYER

The obligations of the Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing Date, of the following conditions, any one or more of which may be waived (in writing) in whole or in part by the Buyer in its sole discretion at or prior to the Closing Date:

Section 9.1. Representations and Warranties of the Seller. All Seller Fundamental Representations shall be true and correct in all respects on and as of the date hereof and as of the Closing Date as if again made by the Seller (on behalf of the Seller or any of the Acquired Entities). All representations and warranties made by the Seller (on behalf of the Seller or any of the Acquired Entities) in this Agreement (other than the Seller Fundamental Representations) shall be true and correct in all material respects (except for each of the representations and warranties made by the Seller (on behalf of the Seller or any of the Acquired Entities) that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of the date hereof and on and as of the Closing Date as if again made by the Seller (on behalf of the Seller or any of the

Acquired Entities) on and as of such date, except to the extent such representations and warranties are made on and as of a specified date, in which event such representations and warranties shall be true and correct in all material respects (except for each of the representations and warranties made by the Seller (on behalf of the Seller or any of the required Acquired Entities) that are limited by materiality, which shall be true and correct in all respects (as so limited)) on and as of such specified date.

Section 9.2. Performance of the Obligations of the Seller. The Seller shall have performed (or caused to be performed) in all material respects all obligations required under this Agreement to be performed by the Seller or any of the Acquired Entities on or before the Closing Date.

Section 9.3. No Violation of Orders. No preliminary or permanent injunction or other order issued by any Governmental Entity, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Entity, which declares this Agreement invalid or unenforceable or prevents the consummation of the transactions contemplated hereby shall be in effect; and no action or proceeding before any Governmental Entity shall have been instituted or threatened by any Governmental Entity or by any other Person which seeks to prevent or delay the consummation of the transactions contemplated by this Agreement or which challenges the validity or enforceability of this Agreement, and which in either such case has a reasonable likelihood of success in the reasonable opinion of counsel to the Buyer.

Section 9.4. STB. The STB Approval shall have been obtained from the STB and shall be in full force and effect, and neither the STB nor any other Governmental Entity shall have imposed any conditions or obligations on the transactions contemplated by this Agreement (other than any immaterial condition or obligation).

Section 9.5. Material Consents. The Seller shall have received, each in form and substance satisfactory to the Buyer, the third-party consents and estoppel certificates set forth in Section 9.5 of the Disclosure Schedules, if any.

Section 9.6. FIRPTA. The Seller shall have delivered to the Buyer at the Closing a duly executed certificate, in form and substance acceptable to the Buyer and in accordance with applicable Regulations, certifying the non-foreign status of the Seller for purposes of Section 1445 of the Code or such facts as to establish that transactions contemplated hereby are exempt from withholding pursuant to Section 1445 of the Code.

Section 9.7. FCC. The application for the transfer of control of the radio license held by Seller described in Section 5.15 shall have been filed.

Section 9.8. No Material Adverse Effect. No event or events shall have occurred since the date of this Agreement which, individually or in the aggregate, have had, or could reasonably be expected to have, a Material Adverse Effect.

Section 9.9. Pre-Transaction Restructuring. Buyer shall have received written evidence, in form and substance satisfactory to Buyer, that the Pre-Transaction Restructuring has been consummated in accordance with this Agreement.

Section 9.10. Closing Deliveries by the Seller. At the Closing, the Seller shall have delivered or caused to be delivered to the Buyer:

- (a) the Assignment and Assumption Agreement, duly executed by the Seller;
- (b) the Escrow Agreement, duly executed by the Seller;
- (c) a duly executed certificate of the Seller certifying as to the matters set forth in Sections 9.1 and 9.2;
- (d) (i) a valid and properly executed IRS Form W-9 from the Seller (or, if the Seller is a disregarded entity for federal income Tax purposes, the Seller's regarded owner) and (ii) a duly executed certificate certifying the non-foreign status of the Seller as set forth in Section 9.6;
- (e) the duly executed resignations of all directors and officers of the Acquired Entities as contemplated in Section 5.10;
- (f) evidence satisfactory to the Buyer that the Seller shall have paid and discharged the Excluded Liabilities;
- (g) evidence of termination of all Affiliate Transactions as contemplated in Section 5.6(a);

(h)

and

- (i) the Estimated Closing Working Capital Statement contemplated in Section 2.3(a).

ARTICLE 10. TERMINATION

Section 10.1. Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated by written notice at any time before the Closing:

- (a) by mutual written consent of the Seller and the Buyer;
- (b) by the Buyer if the Seller has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within [REDACTED] such that the conditions set forth in Section 9.1 or Section 9.2 hereof, as the case may be, cannot be satisfied; provided that the Buyer is not then in material breach of the terms of this Agreement;

(c) by the Seller if the Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and has not cured such breach within [REDACTED] such that the conditions set forth in Section 8.1 or Section 8.2 hereof, as the case may be, cannot be satisfied; provided that the Seller is not then in material breach of the terms of this Agreement;

(d) by the Seller or the Buyer if there shall be a final, non-appealable order of a court of competent jurisdiction in the United States in effect preventing, restraining, enjoining or otherwise prohibiting consummation of the transactions contemplated hereby; provided, however, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any party whose failure to perform any of its obligations under this Agreement has been the primary cause of such order;

(e) by the Buyer if there is a determination by the STB that the STB Approval shall not be granted or become effective; or

(f) by either the Seller or the Buyer at any time after [REDACTED] (the “Outside Date”) if the Closing shall not have occurred by such date; provided, however, that that (i) Seller shall not be entitled to terminate this Agreement pursuant to this Section 10.1(f) if the Seller has breached this Agreement and such breach has resulted in the failure of a condition in Section 8.1 or Section 8.2 to be satisfied and (ii) Buyer shall not be entitled to terminate this Agreement pursuant to this Section 10.1(f) if Buyer has breached this Agreement and such breach has resulted in the failure of a condition in Section 9.1 or Section 9.2 to be satisfied. The right to terminate this Agreement under this Section 10.1(f) shall not be available to any party whose failure to perform any of its obligations under this Agreement has been the primary cause of the failure of the Closing to occur by the Outside Date.

Section 10.2. Effect of Termination. Except as provided herein, in the event of the termination of this Agreement as provided in Section 10.1 hereof, this Agreement shall forthwith become void and have no effect, and there shall be no Liability or obligation on the part of the Seller or the Buyer, or their respective officers, directors, stockholders, members, partners or other Persons under their control (including the Acquired Entities and any other member of the Buyer Group); provided, however, that the provisions on this Section 10.2 shall not relieve any party hereto from any Liability arising out of a party’s willful breach of this Agreement or fraud in connection with this Agreement. The provisions of Sections 12.2, 12.3, 12.4 and 12.17 shall survive any termination hereof pursuant to Section 10.1.

ARTICLE 11. TAX MATTERS

The following provisions shall govern the allocation of responsibility between the Buyer and the Seller for certain Tax matters following the Closing Date:

Section 11.1. Tax Returns.

(a) The Buyer shall, at the Buyer’s expense, prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Acquired Entities applicable to the Post-Closing Tax Period or Straddle Period. The Buyer shall deliver to the Seller a copy of any such Straddle

Period Tax Return [REDACTED] prior to the due date (including extensions) for the filing of such Tax Return for review and comment by the Seller to the extent it reflects a Tax for which Seller is liable. The Seller shall, at the Seller's expense, prepare or cause to be prepared and file or cause to be filed (in a manner consistent with past practices) all Tax Returns of or relating to the Acquired Entities for the Pre-Closing Tax Period. The Seller shall deliver to the Buyer a copy of any such Tax Return [REDACTED] prior to the due date (including extensions) for the filing of such Tax Return for review, comment, and to the extent the Tax Returns are entity-level Tax Returns of the Acquired Entities, approval (which approval shall not be unreasonably withheld, conditioned or delayed), by the Buyer.

(b) For purposes of Section 11.1(a) whenever it is necessary to determine the Liability for Taxes of the Acquired Entities for a taxable period that begins on or before, and ends after, the Closing Date:

(i) Taxes imposed on a periodic basis (such as real, personal and intangible property Taxes) shall [REDACTED]

(ii) [REDACTED]

Section 11.2. Tax Cooperation. The Buyer and the Seller shall reasonably cooperate, and shall cause their respective Affiliates (including the Acquired Entities), officers, employees, agents, auditors and representatives to reasonably cooperate (including by maintaining in accordance with the applicable record retention policies of the Buyer or the Seller, as applicable, and making available to each other all relevant records and information), in preparing and filing all Tax Returns and in resolving all disputes and audits for all taxable periods. Such cooperation shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Seller and the Buyer agree to retain all books and records with respect to Tax matters pertinent to the Acquired Entities relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations (and, to the extent notified by the Buyer or the Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority. The Buyer and the Seller further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Governmental Entity or

any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the transactions contemplated hereby).

Section 11.3. Transfer Taxes.

Section 11.4. Tax Sharing Agreement. Any Tax sharing or Tax indemnification agreement or similar Contract or arrangement (whether written or not) and all powers of attorney with respect to or involving any Acquired Entity shall be terminated as of the Closing Date and, after the Closing Date, no Acquired Entity shall be bound thereby or have any Liability thereunder.

Section 11.5. Tax Treatment. For U.S. federal (and applicable state and local) income Tax purposes, the purchase of the Acquired Entities shall be treated as an acquisition of the assets of the Acquired Entities. Within [REDACTED] after the date on which the Closing Working Capital Statement has been (or is deemed to have been) agreed to and finalized, Buyer shall prepare and deliver to the Seller an allocation of the consideration pursuant to this Agreement among the assets of the Acquired Entities pursuant to U.S. federal income Tax Law (the “Purchase Price Allocation”). The Seller shall have [REDACTED] to provide comments in writing to the Buyer, which Buyer shall consider in good faith. If the parties are unable to resolve any dispute with respect to the Purchase Price Allocation, such disputed issue shall be referred to and resolved by the Independent Accounting Firm, the fees and disbursements of which shall be allocated in the manner described in Section 2.3(e), mutatis mutandis. The Purchase Price Allocation, once finalized, shall be binding on the parties, who shall not take any Tax position inconsistent with the Purchase Price Allocation absent a “determination” (within the meaning of Section 1313 of the Code) to the contrary.

ARTICLE 12.
MISCELLANEOUS

Section 12.1. Successors and Assigns. No party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other parties hereto and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that the Buyer may assign any or all of its rights and obligations hereunder (other than Buyer’s obligations under Section 5.5(b)) to any member of the Buyer Group; provided further that no such assignment shall reduce or otherwise vitiate any of the obligations of the Buyer hereunder, including those under Section 5.5(b). This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto and no assignment shall relieve any party of any obligation or Liability under this Agreement.

Section 12.2. Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of

Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than those of the State of Delaware. Each party hereto agrees to commence any action, suit or proceeding arising out of this Agreement or any transaction contemplated hereby in any federal court sitting in the City of Wilmington, Delaware or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in any Delaware state court. Each party hereto irrevocably submits to the jurisdiction of such court for the purposes of any such suit, action or other proceeding. If the matter of such suit, action or proceeding falls within the jurisdiction of the Delaware Court of Chancery, then the parties agree and prefer that such suit, action or proceeding related to such matter shall be submitted exclusively to the Delaware Court of Chancery. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth below shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 12.2. Each party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in any federal court in the City of Wilmington, Delaware, or any Delaware state court and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 12.3. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND COVENANTS THAT IT WILL NOT ASSERT ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION, OR SUIT ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY ACKNOWLEDGES THAT THIS SECTION 12.3 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH IT RELIES IN ENTERING THIS AGREEMENT.

Section 12.4. Expenses. The Seller shall pay or bear (collectively, the "Transaction Expenses"):



Section 12.5. Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

Section 12.6. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if served personally on the party to whom notice is to be given, (b) on the day of transmission if sent via email (with confirmation of transmission), (c) when received by the addressee if sent through Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service or (d) on the third day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to the Seller:

John P. Levine
Pinsly Railroad Company
94 North Elm Street, Suite 404
Westfield, MA 01085
Email: jplevine@pinsly.com
Facsimile No.: (413) 562-8460

If to the Buyer:

Gulf & Atlantic Railways, LLC
245 Riverside Ave, Suite 250
Jacksonville, FL 32202
Attn: Ryan Ratledge
E-mail: ryan.ratledge@garailways.com

With a copy (which shall not constitute notice) to:
Bulkley, Richardson and Gelinas, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115-5507
Attention: Michael D. Sweet
Email: msweet@bulkley.com
Facsimile No.: (413) 707-1742

With a copy (which shall not constitute notice) to:
Macquarie Infrastructure and Real Assets Inc.
125 W 55th Street, 15th Floor
New York, New York 10019
Attn: Henry Blackford
E-mail: henry.blackford@macquarie.com
MAMRALegalNotices@macquarie.com

and

Sidley Austin LLP
1000 Louisiana St., Suite 5900
Houston, TX 77002
Attn: Cliff W. Vrielink
Chris Folmsbee
E-mail: cvrielink@sidley.com
cfolmsbee@sidley.com

Any party may change its address for the purpose of this Section by giving the other party written notice of its new address in the manner set forth above.

Section 12.7. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may

be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 12.8. Public Announcements.

(a) The parties agree that after the signing of this Agreement and prior to the Closing Date, the Seller shall not, and shall not permit the Acquired Entities to, and the Buyer shall not, make any press release or public announcement concerning this transaction without the prior approval of the other party or parties hereto unless a press release or public announcement is required by Law or the rules of any securities exchange on which such party's securities are listed. Before a party to this Agreement makes any such announcement or other disclosure, it agrees to give the other parties hereto prior notice and an opportunity to review and approve the proposed disclosure. For purposes of this Section 12.8(a), the term "public announcement" shall include communications with employees, customers and vendors of, and other parties with material commercial relationships with, the Acquired Entities. Notwithstanding the foregoing, the Parties acknowledge that, following execution of this Agreement and prior to Closing, Seller intends to (and is permitted to) communicate with employees of the Acquired Entities to disclose the identity of Buyer, the estimated timeframe for closing, and Buyer's commitment regarding continued employment of Continuing Employees following the Closing; provided, however, that Seller agrees to discuss such communication with the CEO or other officer of Buyer prior to such employee communication in an effort to cooperate and coordinate with the transition of Acquired Entities to ownership by Buyer.

(b) Following the Closing, the parties agree that no public release or announcement concerning the terms of this Agreement or the transactions contemplated hereby shall be issued or caused to be issued by any party hereto or any of their Affiliates or Representatives without the prior written consent of the other party, as applicable, except for such release or announcement as may be required by Law, in which case the party required to make the release or announcement shall use commercially reasonable efforts to allow the other parties reasonable time to comment on such release (and will consider any such comments in good faith) or announcement in advance of such issuance.

(c) Nothing in this Section 12.8 shall limit or restrict Buyer Group from making non-public announcements regarding this Agreement and the transactions contemplated hereby to their and their Affiliates' respective representatives as necessary in connection with the ordinary conduct of their respective businesses (so long as such Persons agree to keep the terms of this Agreement confidential) and nothing herein shall prevent Buyer Group from making customary disclosures, including the key economic terms of the transactions contemplated hereby and the return realized as a result thereof, to current or prospective investors in connection with fundraising, marketing or reporting activities.

Section 12.9. Entire Agreement. This Agreement (including the Disclosure Schedules and the other Exhibits and Schedules attached hereto) and the Ancillary Agreements

contain the entire agreement and understanding among the parties hereto with respect to the transactions contemplated hereby and supersedes and replaces all prior agreements and understandings, oral or written with regard to such transactions. All Exhibits and Schedules (including the Disclosure Schedules) hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 12.10. Parties in Interest. Except as expressly provided herein, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement to any Person other than the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party's current or former employee, director, officer or consultant any rights, remedies or obligations under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the obligations or Liability of any third Person to the Seller or the Buyer. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Seller or the Buyer.

Section 12.11. Scheduled Disclosures. Disclosure of any matter, fact or circumstance in a schedule to this Agreement shall be deemed to have been disclosed on all applicable Sections of the Disclosure Schedules to which such disclosure could relate or apply. Wherever in this Agreement there is a statement that documents have been delivered, provided or made available to the Buyer, or words of similar import are used, such words shall mean the posting and granting access to Buyer and its representatives of the referenced document



Section 12.12. Section and Paragraph Headings; Neutral Construction.

(a) The Section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(b) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(d) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires.

(e) the terms "hereof," "herein," "hereunder," "hereby" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as

a whole (including the Disclosure Schedules and the exhibits hereto) and not to any particular provision of this Agreement.

(f) all accounting terms used and not defined herein have the respective meanings given to them under GAAP.

(g) any reference to any Law is a reference to the Law as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, includes any rules and regulations promulgated under the statute) and any reference to any section of any statute, rule or regulation includes any successor to the section.

(h) references to dollars or "\$" are references to United States of America dollars.

(i) Unless otherwise specified herein, undefined terms shall be given the meaning customarily applied to such terms in the railroad industry in the United States of America.

Section 12.13. Knowledge. References in this Agreement to the "knowledge of the Seller" shall refer to the actual knowledge of John P. Levine or Thomas C. Owen, Jr., in each case, after due inquiry.

Section 12.14. Confidentiality.

(a) For a period of [REDACTED] unless otherwise required by Law, (i) the Seller shall, and shall cause its Affiliates to, keep secret and retain in strictest confidence any Confidential Information relating to (A) the Buyer or its business to the extent such Confidential Information was disclosed by the Buyer, its Affiliates, or their representatives and agents in the preparation, negotiation and delivery of this Agreement and the transactions contemplated herein, or (B) the Acquired Entities, including any and all information, knowledge, data, ideas, concepts, plans and strategies whether now or hereafter existing relating to or arising from the past, current or planned business, activities, finances and/or operations of the Acquired Entities and the Business that is known to the Seller or such Affiliates, and (ii) the Buyer shall keep secret and retain in strictest confidence, and shall not use for the benefit of themselves or others any Confidential Information relating to the Seller or their business (other than, following the Closing, insofar as such information relates to the Acquired Entities) to the extent such Confidential Information was disclosed by the Seller, their Affiliates or their representatives and agents in the preparation, negotiation and delivery of this Agreement (including such information that was disclosed to the Buyer during the course of the Buyer's due diligence investigation of the Acquired Entities) and the transactions contemplated herein.

(b) The Buyer acknowledges and agrees that, notwithstanding anything to the contrary contained in this Agreement, the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to the Buyer pursuant to this Agreement; provided, however, that the Confidentiality Agreement shall be automatically terminated upon the occurrence of the Closing. If this Agreement is, for any reason, terminated

prior to the Closing, the Confidentiality Agreement shall nonetheless continue in full force and effect pursuant to its terms.

Section 12.15. Access to Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by the Seller prior to the Closing, or for any other reasonable purpose, for a period of [REDACTED] the Buyer shall: (i) retain the books and records (including personnel files) of the Acquired Entities relating to periods prior to the Closing in a manner consistent with the historical practices of the Acquired Entities; and (ii) upon reasonable notice, afford the Seller and its agents reasonable access (including the right to make, at the Seller's expense, photocopies), during normal business hours, to such books and records.

(b) Neither the Buyer nor the Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 12.15 where such access would violate any Law.

Section 12.16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

Section 12.17. Specific Performance. The parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

Section 12.18. Non-Recourse Against Non-Parties. Notwithstanding anything that may be expressed or implied in this Agreement, all claims or causes of action (whether in Contract or in tort, in Law or in equity) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby may be made only against the entities that are expressly identified as parties hereto. No Person who is not a named party to this Agreement, including any past, present or future director, officer, incorporator, member, manager, partner, direct or indirect equityholder, Affiliate, agent, employee, attorney or other representative of any named party to this Agreement or any Affiliate of the foregoing, including any member of Buyer Group ("Non-Party Affiliates") shall have any Liability (whether in Contract or in tort, in law or in equity, or based upon any theory that seeks to impose Liability on an entity party against its owners or Affiliates) for any obligations or Liabilities arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation or execution, and each party hereto waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third-party beneficiaries of this Section 12.18.

[Remainder of page intentionally left blank]

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

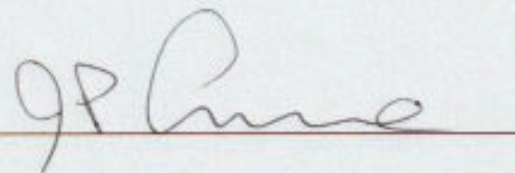
THE SELLER:

PINSLY RAILROAD COMPANY

By: 
Name: John P. Levine
Title: Chief Executive Officer

JOHN LEVINE:

JOHN P. LEVINE
(solely for purposes of Section 5.11, Section 6.8 and Section 7.3)



THE BUYER:

GULF & ATLANTIC RAILWAYS, LLC

By: _____
Name: Ryan Ratledge
Title: President and Chief Executive Officer

THE BUYER:

GULF & ATLANTIC RAILWAYS, LLC

By: _____
Name: Ryan Ratledge
Title: President and Chief Executive Officer