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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Office of Proceedings  
June 2, 2020  
Part of  
Public Record

Finance Docket No. 36409

JON DELLI PRISCOLI AND FIRST COLONY DEVELOPMENT  
AND RAIL HOLDINGS CO. -- ACQUISITION OF CONTROL --  
MASSACHUSETTS COASTAL RAILROAD LLC

VERIFIED NOTICE OF EXEMPTION

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Monterey, CA 93940  
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Attorney for Jon Delli Priscoli  
and First Colony Development  
and Rail Holdings Co

Dated: June 2, 2020

FILED  
June 2, 2020  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
June 2, 2020  
SURFACE  
TRANSPORTATION BOARD

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JON DELLI PRISCOLI AND FIRST COLONY DEVELOPMENT  
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MASSACHUSETTS COASTAL RAILROAD LLC

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 CFR §§ 1180.2 (d)(2) and 1180.4 (g), Jon Delli Priscoli ("Delli Priscoli"), an individual, and First Colony Development and Rail Holdings Co. ("Holdings"), a non-carrier holding company incorporated under the laws of the Commonwealth of Massachusetts, file this Verified Notice to exempt them from the prior approval requirements of 49 U.S.C. §§ 11323-11325 for the acquisition of control of Massachusetts Coastal Railroad LLC ("Mass Coastal"), a Class III rail carrier operating in Massachusetts. In accordance with the requirements of 49 CFR § 1180.4 (g), Delli Priscoli and Holdings submit the following information:

**A. Description of Proposed Transaction -- 49 CFR § 1180.6 (a)(1)(i)**

Delli Priscoli owns all of the outstanding stock of Grafton and Upton Railroad Co., a Class III rail carrier operating a line between Grafton, Massachusetts and Milford, Massachusetts. Delli Priscoli also owns all of the outstanding stock of Holdings, which is a newly formed holding company that intends to purchase all of the outstanding membership interests of Mass Coastal, as described more fully below.

Mass Coastal is a wholly-owned subsidiary of San Luis & Rio Grande Railroad Co. ("SLRG"), which is the debtor in a Chapter 11 bankruptcy proceeding pending in the United States Bankruptcy Court for the District of Colorado. Mass Coastal operates lines between Middleboro and Yarmouth Massachusetts, between Middleboro and Taunton, Massachusetts and between Taunton and New Bedford and Fall River, Massachusetts.

William A. Brandt, the Chapter 11 trustee of SLRG (the "Trustee"), has entered into a Membership Interest Purchase Agreement dated May 11, 2020 (the "Agreement") with a so-called "stalking horse" bidder to sell the membership interests of Mass Coastal. Pursuant to bidding procedures established by the Trustee and the Bankruptcy Court, the Agreement is subject to higher and better offers by interested parties. Holdings intends to make such an offer, thereby entitling it to participate in an auction under the auspices of the Trustee and the Bankruptcy Court. The winning bid at the auction will entitle Holdings, following approval by the Bankruptcy Court, to acquire the membership interests of Mass Coastal.

Delli Priscoli and Holdings are filing this Verified Notice even before knowing for certain that Holdings will be the winning bidder and entitled to acquire the membership interests of Mass Coastal in order to meet a closing schedule imposed by the Bankruptcy Court and the bidding procedures. The schedule contemplates a closing shortly after the anticipated approval of the sale by the Bankruptcy Court on a schedule that would not allow sufficient time for Holdings and Delli Priscoli to file a Verified Notice after being selected as the winning bidder. In order to assure the passage of the 30 day period before this Verified Notice becomes effective, it is necessary to file this Verified Notice at this time in order to close the transaction within the timetable

established by the Trustee. Closing within such a timetable would avoid the potential forfeiture of Holdings' deposit.

Upon acquisition of Mass Coastal, Delli Priscoli, through Holdings, will control two rail carriers -- Mass Coastal indirectly and G&U directly. The rail lines respectively owned or operated by G&U and Mass Coastal do not connect with each other or with any other railroads in their respective corporate families. The acquisition of control of Mass Coastal is not part of a series of anticipated transactions that would connect the railroads with each other or with any railroad in either of their respective corporate families. Furthermore, the transaction does not involve a Class I carrier. Consequently, the proposed transaction comes within the scope of 49 CFR § 1180.2 (d)(2).

The full names and addresses of Delli Priscoli and Holdings are as follows:

Jon Delli Priscoli  
7 Eda Avenue  
Carver, MA 02330

Holdings  
7 Eda Avenue  
Carver, MA 02330

Any questions concerning this Verified Notice should be directed to counsel for Delli Priscoli and Holdings at the following address:

James E. Howard  
57 Via Buena Vista  
Monterey, CA 93940  
831-324-0233  
jim@jehowardlaw.com

**B. Proposed Time Schedule for Consummation -- 49 CFR § 1180.6 (a)(1)(ii)**

Holdings intends to consummate the transaction to acquire the membership interests of Mass Coastal shortly after the expiration of 30 days from the date of the filing of this Verified Notice.

**C. Purpose Sought to be Accomplished -- 49 CFR § 1180.6 (a)(1)(iii)**

The acquisition of Mass Coastal by Holdings will afford Mass Coastal improved access to financial resources and opportunities for achieving operating economies and efficiencies as a result of common control with another rail carrier. As a result, there will be an improvement of rail service to the public.

**D. States in Which Property is Located -- 49 CFR § 1180.6 (a)(5)**

The respective properties of both G&U and Mass Coastal are entirely located within the Commonwealth of Massachusetts.

**E. Maps -- 49 CFR § 1180.6 (a)(6)**

Maps of the rail lines respectively operated by G&U and Mass Coastal are attached as Exhibit 1.

**F. Agreement -- 49 CFR § 1180.6 (a)(7)(ii)**

As described above, Holdings will be participating in the submission of a bid and an auction under the auspices of the Bankruptcy Court and the Trustee. The bidding procedures require the submission of a purchase agreement substantially in the form of the Agreement between the Trustee and the stalking horse bidder, which was filed with the Bankruptcy Court on May 11, 2020. Holdings will submit such an agreement with its bid, and the Trustee will sign the agreement in the event that Holdings is the winning bidder. At this time, therefore, there is no final, executed agreement between Holdings

and the Trustee that can be submitted with this Verified Notice, but the agreement attached hereto as Exhibit 2 will be substantially similar to the agreement to be executed by Holdings and the Trustee.

**G. Labor Protective Conditions -- 49 CFR § 1180.4 (g)(2)(ii)**

Under 49 U.S.C. § 10502 (g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Section 11326 (e), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because the carriers involved are Class III rail carriers.

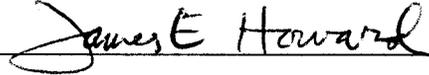
**H. No Interchange Commitment -- 49 CFR § 1180.4 (g)(4)**

The proposed transaction does not involve any provision or agreement that may limit future interchange with a third party connecting carrier.

**I. Environmental and Historic Impacts -- 49 CFR § 1180.4 (g)(3)**

Pursuant to 49 CFR § 1105.6 (c)(1), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations and will not result in any changes that exceed the thresholds established in 49 CFR § 1105.7 (e)(4) or (5). Under 49 CFR § 1105.8 (b)(1), the proposed transaction is exempt from historic preservation reporting requirements. The proposed transaction will not change any current rail operations or substantially change the level of maintenance of rail property. Furthermore, Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter property subject to Board jurisdiction that are 50 years old or older.

Respectfully submitted,

  
\_\_\_\_\_

James E. Howard  
57 Via Buena Vista  
Monterey, CA 93940  
831-324-0233  
[jim@jehowardlaw.com](mailto:jim@jehowardlaw.com)

Dated: June 2, 2020

VERIFICATION

I, Michael R. Milanoski, declare under penalty of perjury that I verify that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice.

Executed: June 2, 2020

A handwritten signature in black ink, appearing to read "MRM", enclosed within an oval-shaped scribble.

---

Michael R. Milanoski  
President  
First Colony Development and  
Rail Holdings Co.

Exhibit 1



# System Map

Customer Service and Marketing:

Phone 508-291-2116 Ext 100  
Fax 508-291-4116

[www.masscoastal.com](http://www.masscoastal.com)

An Iowa Pacific Holdings Company

## Legend

- █ MASSDOT-Mass Coastal (CSX Rights)
- █ Mass Coastal Railroad
- █ CSX Transportation (Our Class 1 Partner)
- █ Future Southcoast Rail
- █ Fore River Transportation
- █ Bay Colony Railroad
- █ Providence & Worcester Railroad
- █ Pan Am Railways
- Station

### Interchanges:

- 1 Taunton, MA (TAUNT) - CSXT
- 2 Middleboro, MA (MIDBO) - CSXT

### Transload Facilities and Public Tracks:

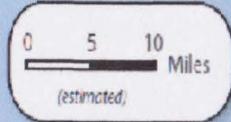
- 1 Gallo Construction Co. - Taunton
- 2 Capeway Rail Terminal - Middleboro
- 3 Fochester Public Track
- 4 Wareham Public Track
- 5 Sagamore Truck & Rail Co. - Sagamore
- 6 Hyannis Public Track
- 7 Upper Cape Regional Transfer Station - North Falmouth (MSW)
- 8 Yarmouth Transfer Station - South Yarmouth (MSW)

### Refrigerated Warehouses

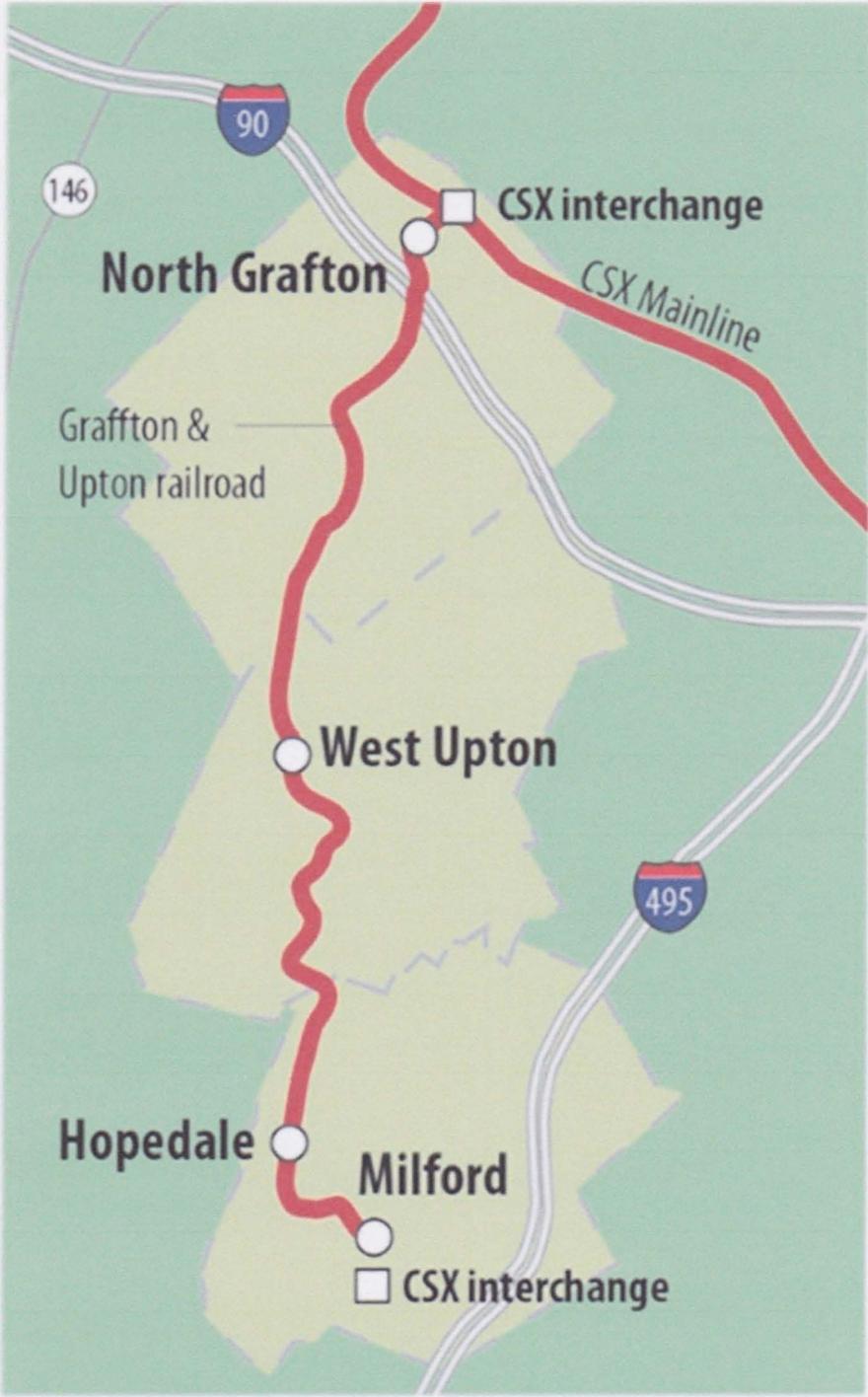
- 1 Northeast Refrigerated-Taunton
- 2 Maritime International-New Bedford

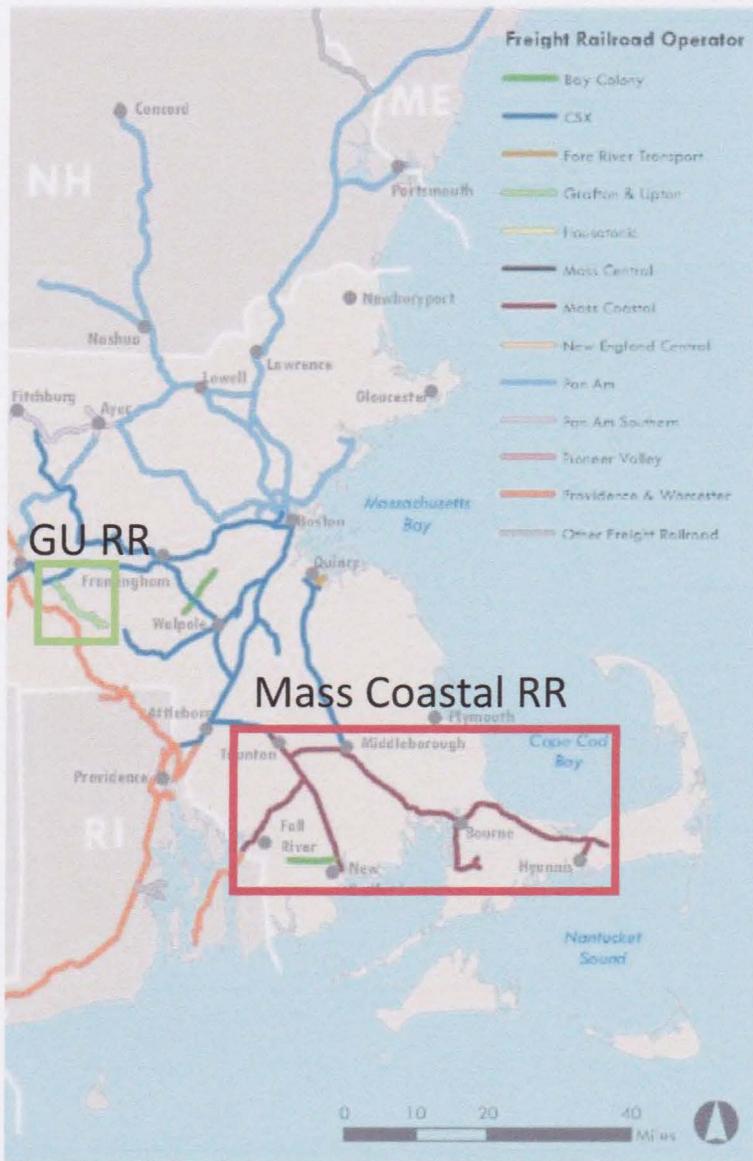
## Mass Coastal Railroad Office Locations

<p><b>Railroad Operations and M of W:</b> 3095 Cranberry Highway East Wareham, MA 02538 Ph 508-291-2116 Fk 508-291-4116</p>	<p>President Ext 100 General Mgr Ext 111 Trainmaster Ext 110</p>	<p><b>Buzzards Bay Tower</b> 76 Main Street Buzzards Bay, MA 02532 Ph 508-291-2116 Ext 140</p>
<p><b>Train Dispatching</b> Ph 608-352-6001</p> <p><b>Grade Crossing Emergencies</b> Ph 888-783-4316</p>	<p><b>Mechanical Facility:</b> Hyannis Engine Terminal Hyannis Rail Yard Hyannis, MA 02601 Ph 508-291-2116 EXT 141 Fk 508-771-3254</p>	<p><b>Cape Cod Central Railroad:</b> 252 Main Street Hyannis, MA 02601 (508) 771-0004</p>



Map copyright: © 2009 Massachusetts Coastal Railroad LLC. All rights reserved.





## Exhibit 2

## **MEMBERSHIP INTEREST PURCHASE AGREEMENT**

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "Agreement") is made as of May \_\_\_\_, 2020, by and between SAN LUIS & RIO GRANDE RAILROAD, INC. (the "Seller"), by and through WILLIAM A. BRANDT, JR (the "Trustee"), not personally but solely as Chapter 11 Trustee, and \_\_\_\_\_, a \_\_\_\_\_ (the "Buyer").

### **WITNESSETH:**

**WHEREAS**, Seller is the Debtor in a bankruptcy proceeding pending in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court") (In re San Luis & Rio Grande Railroad, Inc., Case No. 19-18905-TBM) (the "Bankruptcy Proceeding").

**WHEREAS**, Seller owns all of the issued and outstanding membership interests (the "Membership Interests") of Massachusetts Coastal Railroad LLC, a Massachusetts limited liability company (the "Company").

**WHEREAS**, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Membership Interests on the terms set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, Seller and Buyer hereby agree as follows:

### **ARTICLE I**

#### **PURCHASE AND SALE OF MEMBERSHIP INTERESTS**

**1.1 Purchase and Sale of Membership Interests.** Upon the terms and subject to the conditions of this Agreement, on the Closing Date (as defined herein), Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase from Seller all of the Membership Interests "AS IS, WHERE IS", free and clear of all liens, claims and security interests.

**1.2 Consideration.** The aggregate total consideration to be paid to Seller for the Membership Interests shall be equal to \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) (the "Purchase Price"). The Purchase Price shall be paid as follows:

(a) Buyer shall have delivered with its Bid a nonrefundable deposit in the form of a wire transfer of readily available funds to Seller's segregated Company account (the "Deposit") in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) in immediately available funds.

(b) On the Closing Date, Buyer shall deliver to Seller, in the form of a wire transfer of readily available funds to Seller's account, \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00).

(c) On the Closing Date, Buyer shall waive and release any and all rights and claims of the Company in the \$327,559.00 of net proceeds from the assignment of tax

credits under 26 U.S.C. § 45G (the “Section 45G Tax Credits”) for calendar years 2018 and 2019 currently being held by the Trustee in a segregated account.

## **ARTICLE II** **CLOSING**

**2.1 Closing Date.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at 10:00 A.M., local time, on the earlier of (i) fifteen (15) days after the entry of an Order of the Bankruptcy Court authorizing the sale of the Membership Interests (the “Sale Order”) which Sale Order makes a good faith finding pursuant to Section 363(m) of the Bankruptcy Code, absent stay pending appeal of such Sale Order; or (ii) five (5) days after the date upon which the Sale Order becomes final and non-appealable, or such later date as may be agreed upon by Buyer and Seller, after the conditions set forth in Article VII have been satisfied. The time and date on which the Closing is actually held may be referred to herein as the “Closing Date.” The Closing shall take place remotely via the exchange of documents and the Purchase Price.

**2.2 Closing Date Payments; Delivery of Membership Interests and Assignment.** Subject to fulfillment or waiver of the conditions set forth in Section 7.1 and Section 7.2, at the Closing, Seller shall deliver (i) the Assignment of Membership Interests transferring the Membership Interests to Buyer in the form attached hereto as Exhibit A and incorporated herein by this reference, and (ii) an Assignment of Claims in the form attached hereto as Exhibit B and incorporated herein by this reference assigning Seller’s rights and/or Claims, if any, in and/or against Cape Rail, Inc. and Cape Cod Central Railroad, Inc. (the “Assigned Claims”) and Buyer shall deliver to Seller the Purchase Price as set forth in Section 1.2 and the additional deliveries set forth in Section 2.3.

**2.3 Additional Deliveries of Buyer.** Subject to fulfillment or waiver of the conditions set forth in Section 7.1, at the Closing, Buyer shall deliver to Seller:

(a) All approvals, consents, and authorizations required by any Regulatory Authority or under applicable law for the consummation of the transactions contemplated by this Agreement (the “Regulatory Approvals”), which may include, but are not limited to, (i) the approval of the Surface Transportation Board (ii) the approval of the Commonwealth of Massachusetts; and (iii) all other Regulatory Approvals that Seller or Buyer is required to obtain to consummate the transactions contemplated by this Agreement;

(b) a release of the Section 45G Tax Credits substantially in the form of Exhibit C attached hereto and incorporated herein by this reference; and

(c) such other documents and instruments as Seller may reasonably request.

## **ARTICLE III** **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer and agrees as follows:

**3.1 Seller's Power and Authority.** Subject to obtaining the Sale Order, Seller has all power and authority necessary to enter into this Agreement and to consummate the transactions contemplated hereby.

**3.2 Brokers.** No broker, investment banker or other Person is entitled to any broker's, finder'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 Seller.

**3.3 "As is, Where is" and Without Representations and Warranties.** The Membership Interests shall be sold and purchased "AS IS, WHERE IS" and without representations and warranties. Seller specifically disclaims (and Buyer expressly agrees that, except to the extent specifically set forth in this Agreement, Seller is not making or giving) any covenant, undertaking, representation or warranty, express or implied, in connection with this Agreement, the Membership Interests, the Company or any other matter relating hereto or thereto, including, without limitation, as to the following matters:

(i) the existence on the Closing Date of any specific items owned by the Company or the quantity or quality thereof;

(ii) the existence or absence on the Closing Date of any Claims (as defined below) against the Company and/or the validity, enforceability, priority, amounts, nature or the quantity or quality thereof, including but not limited to those Claims listed on Schedule 8.1; or

(iii) the condition, quality, suitability, value, merchantability or fitness for a particular purpose of any items owned by the Company, or of the past, present or future financial condition, businesses, prospects, or operations of the Company, or any aspect thereof, including, without limitation, the validity, enforceability, priority, amounts or any other aspect of the contracts and agreements of the Company, that the books, records, systems, processes, and operations of the Company have been maintained in a secure or confidential fashion.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller and agrees as follows:

**4.1 Authority of Buyer.** Buyer has the requisite power and authority to enter into this Agreement and all agreements, instruments and documents being executed and delivered by Buyer, under this Agreement or in connection herewith, and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Buyer. Assuming the valid authorization, execution and delivery by the other parties, this Agreement is the legal, valid and binding obligation of Buyer enforceable in accordance with its terms except to the extent as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors rights generally and by the effect of general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or law).

**4.2 Consents and Approvals; No Violation.** Neither the execution and delivery of this Agreement or the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(a) require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with any Regulatory Authority or other Person, including but not limited to the Surface Transportation Board or the Commonwealth of Massachusetts; or

(b) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under, or result in the creation or imposition of any encumbrance upon any of the assets or properties of Buyer, under any federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Regulatory Authority (collectively, “Requirements of Laws”) applicable to Buyer or their assets or properties.

**4.3 Actions and Proceedings.** There are no lawsuits, claims, suits, proceedings or investigations before any Regulatory Authority or other Person pending, or to the knowledge of Buyer threatened, against Buyer; and there is no action, suit or proceeding before any Regulatory Authority or other Person pending, or to the knowledge of Buyer, threatened which questions the legality or propriety of the transactions contemplated by this Agreement.

**4.4 Brokers.** No broker, investment banker or other Person is entitled to any broker’s, finder’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 Buyer.

**4.5 Investment Representation.** Buyer is acquiring the Membership Interests under this Agreement for investment purposes only and is not acquiring the Membership Interests for distribution or other disposition thereof, and Seller is proceeding on the assumption that Buyer must bear the economic risk of the investment. Buyer is sophisticated with respect to the operations of the Company and the Company’s industry, has knowledge and experience in financial and business matters and has specific knowledge and experience related to the Company and the Company’s industry based on the fact that P. Christopher Podgurski, the sole owner and manager of Buyer, has been an employee and manager of the Company since 2006 and is capable of evaluating, with the Buyer’s advisors, the merits and risks of the purchase of the Company. Buyer understands that any transfer of the Membership Interests is restricted and that the Membership Interests have not been registered under the Securities Act of 1933, as amended, and therefore cannot be resold unless they are registered thereunder or an exemption from such registration is available.

**4.6 “As Is” Purchase.** Buyer acknowledges and agrees that, except to the extent expressly set forth in this Agreement, Seller has not made, and does not make, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Company’s assets and liabilities, business or operations (collectively, the “Company Assets”), including, without limitation: (a) the value, nature, quality

or condition of the Company Assets, (b) the value, nature, quality of the Claims against the Company, including but not limited to those Claims listed on Schedule 8.1, (c) the income to be derived from, the profits of, or the performance of the Company Assets, (d) the suitability of the Company Assets for any and all activities and uses which Buyer may conduct thereon, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Company Assets, or (f) the manner or quality of the construction or materials, if any, incorporated into the Company Assets, (g) the manner, quality, state of repair or lack of repair of the Company Assets. Buyer further acknowledges and agrees that, having been given the opportunity to inspect the Company Assets, Buyer has obtained all information required by Buyer, and Buyer is relying solely on its own investigations and not on any information provided or to be provided by Seller or Trustee. **BUYER ACKNOWLEDGES AND AGREES THAT (A) THE SALE OF THE MEMBERSHIP INTERESTS TO BUYER IS: WITHOUT RECOURSE TO SELLER OR TRUSTEE ON AN "AS IS, WHERE IS" BASIS; WITHOUT ANY REPRESENTATIONS OR WARRANTIES AS TO THE MEMBERSHIP INTERESTS, THE COMPANY OR ANY ASSETS OR LIABILITIES OF THE COMPANY, INCLUDING, BUT NOT LIMITED TO, THE EXISTENCE OR NON-EXISTENCE OF ANY ASSETS, CLAIMS OR LIABILITIES, OWNERSHIP, TITLE, DESIGN, CONDITION, WORKMANSHIP, USE, MERCHANTABILITY, FITNESS OF PARTICULAR PURPOSE, VALUE, COMPLIANCE OF ANY PROPERTY WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS, QUANTITY OR ANY OTHER MATTERS WHATSOEVER; (B) SELLER IS SELLING THE MEMBERSHIP INTERESTS TO BUYER WITHOUT RECOURSE TO SELLER OR TRUSTEE; AND (C) SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO TITLE TO OR VALUE, IF ANY, OF THE MEMBERSHIP INTERESTS. THE REPRESENTATIONS OF BUYER AND THE OTHER PROVISIONS OF THIS ARTICLE IV WILL SURVIVE THE CLOSING INDEFINITELY.**

#### **ARTICLE V** **ACTION PRIOR TO THE CLOSING DATE**

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

**5.1 Investigation of the Company by Buyer.** Prior to the Closing Date, Seller agrees that Seller will give, or cause to be given, to Buyer and its representatives, during normal business hours and at Buyer's expense, full and unrestricted access to the Company's personnel, officers, agents, employees, assets, properties, titles, contracts, company minute and other books, records, files and documents of Company (including financial, tax basis, budget projections, accountants' work papers and other information as Buyer may request) and to the Company's personnel, customers, suppliers and independent accountants, to allow Buyer to obtain such information as Buyer shall desire, and to make copies of such information, to the extent reasonably necessary.

**5.2 Investigation of the Company by Seller.** Prior to the Closing Date, Buyer agrees that Buyer will give, or cause to be given, to Seller and its representatives, during normal business hours and at Buyer's expense, full and unrestricted access to the Company's

personnel, officers, agents, employees, assets, properties, titles, contracts, company minutes and other books, records, files and documents of the Company (including financial, tax basis, budget projections, accountants' work papers and other information as Seller may request) and to the Company's personnel, customers, suppliers and independent accountants, to allow Seller to obtain such information as Seller shall desire, and to make copies of such information, to the extent reasonably necessary.

**5.3 Forbearances.** Except as expressly contemplated by this Agreement or except with the express written approval of Buyer, the Company shall not (i) amend its Certificate of Organization or Operating Agreement, or (ii) issue, grant, sell or encumber any securities; issue, grant, sell or encumber any security, option, warrant, put, call, subscription or other right of any kind, fixed or contingent, that directly or indirectly calls for the acquisition, issuance, sale, pledge or other disposition of any securities or make any other changes in the equity capital structure of the Company.

**5.4 Approvals, Consents, Authorizations.** Buyer, at Buyer's sole expense, agrees to obtain all Regulatory Approvals and satisfy all Requirements of Law for the consummation of the transactions contemplated by this Agreement.

## **ARTICLE VI**

### **ADDITIONAL AGREEMENTS**

**6.1 Access to Records after Closing.** For a period of three (3) years after the Closing Date, Seller and their representatives (including their accountants and attorneys) shall have reasonable access to all of the books and records of the Company to the extent that such access may reasonably be required by Seller in connection with matters relating to or affected by the operations of the Company prior to the Closing Date, which shall include the tax matters set forth in Section 6.3. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours. Seller shall be solely responsible for any costs or expenses incurred by Seller pursuant to this Section 6.1. The provisions of this Section will survive the Closing.

**6.2 Further Assurances.** Upon the execution of this Agreement, the parties agree to take or cause to be taken, in a commercially reasonable and prompt manner, all actions necessary to effect the transactions contemplated by this Agreement.

**6.3 Tax Matters.** The following provisions will survive the Closing indefinitely and shall govern the allocation of responsibility as between Buyer and Seller for certain tax matters:

(a) Seller shall prepare or cause to be prepared and file or cause to be filed all tax returns for the Company for calendar years 2017, 2018 and 2019, with each Party bearing the costs to do so (including the payment of any taxes); provided however, the costs to Buyer related to the preparation and filing of the tax returns for calendar years 2017, 2018 and 2019 shall in no event exceed \$5000. Buyer shall prepare or cause to be prepared and file or cause to be filed all tax returns for the Company for calendar year 2020 and each year thereafter, at Buyer's expense (including the payment of all related

taxes). Each party shall permit the other party to review and comment on each such tax return described in the preceding sentences prior to filing.

(b) Buyer and Seller shall cooperate fully, as and to the extent reasonably requested by any other party, in connection with the filing of tax returns pursuant to this Section and any audit, examination or other proceeding with respect to taxes of the Company (a “Tax Proceeding”). Such cooperation shall include prompt notification of notices or examinations or assessments regarding taxes covering any period prior to Closing, the retention and (upon any other party’s request) the provision of records and information which are reasonably relevant to any such filing, audit, litigation or other Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer and Seller agree (A) to retain all books and records with respect to tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Buyer or Seller, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other Party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, such party shall allow the other party to take possession of such books and records.

(c) All transfer, documentary, sales, use, stamp, registration and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement, shall be paid by Buyer when due, and Buyer will, at its own expense, file all necessary tax returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other taxes and fees, if required by applicable law.

(d) Buyer acknowledges and agrees that upon the Closing Date, neither Buyer nor the Company shall have any claim to or interest in any Section 45G Tax Credits and rights thereunder attributable to the Company for calendar years 2018 and 2019, which Section 45G Tax Credits shall belong to Seller’s bankruptcy estate. Seller acknowledges and agrees that Seller shall not have any claim to or interest in any Section 45G Tax Credits and rights thereunder attributable to the Company for calendar year 2020 and thereafter.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF PARTIES**

**7.1 Conditions to Buyer’s Obligations.** The obligations of Buyer to purchase the Membership Interests pursuant to this Agreement shall be subject to receipt of the deliveries specified in Section 2.2 and the satisfaction or Buyer’s waiver, on or prior to the Closing Date, of the following conditions:

(a) Seller shall have obtained the Sale Order, and the Sale Order shall not have been reversed, stayed, modified, or amended in any respect and as to which the time to seek review shall have expired and no appeal or petition for review or rehearing shall be pending; or, if the Sale Order contains a finding of good faith in accordance with

Section 363(m) of the Bankruptcy Code, there being no order staying the effectiveness of the Sale Order pending any appeal.

(b) Each of the representations and warranties of Seller contained or referred to herein shall be true and correct on the date hereof and on the Closing Date in all material respects as though made on the Closing Date, except for changes therein specifically permitted by this Agreement.

(c) No action, suit, investigation or proceeding shall have been instituted or threatened to restrain or prohibit or otherwise challenge the legality or validity of the transactions contemplated hereby.

**7.2 Conditions to Seller's Obligations.** The obligations of Seller to sell the Membership Interests pursuant to this Agreement shall, at the option of Seller, be subject to receipt of the deliveries specified in Section 2.3 and the satisfaction or Seller's waiver, on or prior to the Closing Date, of the following conditions:

(a) There shall have been no material breach by Buyer in the performance of any of its covenants and agreements herein; each of the representations and warranties of Buyer contained or referred to in this Agreement shall be true and correct on the date hereof and on the Closing Date in all material respects as though made on the Closing Date, except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Seller or any transaction contemplated by this Agreement; and there shall have been delivered to Seller a certificate to such effect, dated the Closing Date and signed by Buyer.

(b) Seller shall have obtained the Sale Order, and the Sale Order shall not have been reversed, stayed, modified, or amended in any respect and as to which the time to seek review shall have expired and no appeal or petition for review or rehearing shall be pending or, if the Sale Order contains a finding of good faith in accordance with Section 363(m) of the Bankruptcy Code, there being no order staying the effectiveness of the Sale Order pending any appeal.

## **ARTICLE VIII** **INDEMNIFICATION**

### **8.1 Indemnification by Buyer.**

(a) Buyer agrees to indemnify and hold harmless Seller, Trustee and their Affiliates and their respective successors and assigns (collectively, the "Seller Group Members") from and against any and all Losses and Expenses incurred by the Seller Group Members in connection with or arising from:

(i) subject to Section 9.2, any breach or failure to perform by Buyer of any of its agreements, covenants or obligations in this Agreement;

(ii) any breach of any warranty or the inaccuracy of any representation of Buyer contained in this Agreement;

(iii) any past, present, or future claims, actions, causes of action, demands, rights, indebtedness, obligations, injuries, losses, debts, promises, fees, costs, expenses, compensation, damages, and/or liabilities of any kind, nature, or amount, whether pursuant to contract, law, equity, statute, or otherwise, known or unknown, suspected or claimed, direct or indirect, accrued or unaccrued, mature or contingent (collectively, “Claims”) against the Company, including, but not limited to, the Claims set forth on Schedule 8.1 (which are hereby acknowledged by Buyer);

(iv) any Claims against Seller arising from the Assigned Claims; or

(v) any Claims arising from (i) the failure of Seller or Buyer to obtain any Regulatory Approvals for the consummation of the transactions contemplated by this Agreement or (ii) the failure of the transactions contemplated by this Agreement to be in compliance with all Requirements of Law.

(b) As used in this Agreement, (i) “Expenses” means any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including court filing fees, court costs, arbitration fees or costs, witness fees and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals), and (ii) “Losses” means any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or other charges.

**8.2 Survival.** This Article VIII will survive the Closing indefinitely.

**ARTICLE IX**  
**SURVIVAL; LIQUIDATED DAMAGES;;**  
**REMEDIES; BANKRUPTCY COURT APPROVALS**

**9.1 Survival of Representations and Warranties.** The representations and warranties of Seller under this Agreement, or in any certificates or other documents delivered prior to or at the Closing, shall lapse and cease to be of any further force or effect effective on the Closing Date. On the Closing Date, the respective covenants and agreements of Seller and Buyer under this Agreement shall lapse and cease to be of any further force or effect except and to the extent that the post-Closing performance of such covenant or agreement is expressly required under this Agreement or such provision expressly survives this Agreement. No post-Closing performance of any such covenant or agreement of Seller shall be deemed waived or otherwise affected by the Closing.

**9.2 Liquidated Damages as Sole Remedy of Seller.** Seller and Buyer acknowledge that the amount of Seller’s actual damages caused by Buyer’s default in its obligation to proceed to Closing would be difficult to determine precisely and that the Deposit, as liquidated damages, is a fair and reasonable approximation. Therefore, Seller and Buyer acknowledge that the amount of the Deposit as set forth in Section 1.2 has been agreed upon as full and complete liquidated damages and as the exclusive and sole right and remedy of Sellers if (i) Buyer fails to purchase the Membership Interests unless the Bankruptcy Court fails to approve

the Sale Order or (ii) Buyer breaches any material representation or covenant or agreement under this Agreement to be performed prior to Closing and, if such breach under this item (ii) is curable, Buyer does not cure such breach within thirty (30) days after receipt of written notice thereof, in which event this Agreement shall terminate and neither party shall have any further obligations or liabilities to the other party, except for (A) Seller's right to retain the Deposit as liquidated damages and (B) those obligations that expressly survive termination of this Agreement. Buyer and Seller agree that the payment and performance of the remedy in this Section is not intended to be a forfeiture or penalty within the meaning of applicable law.

**9.3** [Intentionally Left Blank].

**9.4** **No Consequential, Speculative or Punitive Damages.** The parties hereto agree that neither party shall have any liability for consequential, speculative or punitive damages.

**9.5** **Bankruptcy Court Approvals.**

(a) -Seller has filed a motion (the "Sale Motion") for the Sale Order approving the sale of the Purchased Assets to Buyer on the terms and conditions set forth in this Agreement free and clear of all liens and security interests. Any changes to the form of the Sale Order must be approved by Buyer and Seller in their reasonable discretion. Seller shall use its commercially reasonable efforts to obtain entry of the Sale Order.

(b) In the event that the Sale Order is appealed or a stay pending appeal is sought, Seller shall oppose the appeal or the stay pending appeal and seek the dismissal of any appeal (including a petition for certiorari, motion for rehearing, reargument, reconsideration or revocation) but, if and only if this Agreement is terminated, then Seller shall be under no obligation under this Agreement to continue such opposition or to seek any such dismissal following July 15, 2020. Notwithstanding the foregoing, any resulting changes to this Agreement or resulting changes to the Sale Order shall be subject to Buyer's approval in its reasonable discretion. Seller shall consult with Buyer and its representatives concerning the Sale Order, any other order of the Bankruptcy Court relating to this Agreement and the bankruptcy proceedings in connection therewith and provide Buyer with copies of requested applications, pleadings, notices, proposed Orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court so as to permit Buyer sufficient time to review and comment on such applications, pleadings, notices, proposed Orders and other documents, and proposed Orders shall be in form and substance reasonably acceptable to Buyer. Seller shall give Buyer reasonable advance notice of any hearings regarding the motions required to obtain the issuance of the Sale Order and Buyer shall have the right to attend and seek to be heard at any such hearings.

(c) Seller further covenants and agrees that, after the Closing, the terms of any reorganization plan they submit to the Bankruptcy Court or any other court for confirmation shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or

performance of the transactions contemplated by this Agreement, including, any transaction contemplated by or approved pursuant to the Sale Order.

## **ARTICLE X** **TERMINATION**

**10.1 Termination.** Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Closing Date:

- (a) by the mutual consent of Buyer and Seller;
- (b) by Seller if the Closing shall not have occurred on or before August 15, 2020 (or such later date as may be mutually agreed to by Seller); provided, that Seller shall not be permitted to terminate this Agreement under this Section 10.1(b) if the Closing has not occurred prior to such date because of a breach by Seller;
- (c) by Buyer or Seller if the Sale Order is not entered on or before July 15, 2020 (or such later date as may be mutually agreed to by Seller and Buyer);
- (d) by Buyer in the event of any material breach by Seller of any of Seller's agreements, representations or warranties contained herein and the failure of Seller to cure such breach within seven days after receipt of notice from Buyer requesting such breach to be cured;
- (e) by Seller in the event of any material breach by Buyer of any of Buyer's agreements, representations or warranties contained herein and the failure of Buyer to cure such breach within seven days after receipt of notice from Seller requesting such breach to be cured; or
- (f) by Seller in accordance with Section 9.3 or as otherwise required by the Bankruptcy Court.

**10.2 Notice of Termination.** Any party desiring to terminate this Agreement pursuant to Section 10.1 shall give notice of such termination pursuant to Section 11.1 to each other party to this Agreement.

**10.3 Effect of Termination.** In the event that this Agreement shall be terminated pursuant to this Article X, all further obligations of the parties under this Agreement (other than Section 10.2) shall be terminated without further liability of any party to any other party. If (i) Buyer terminates this Agreement pursuant to Sections 10.1(c) or (d), or (ii) Seller terminates this Agreement pursuant to Section 10.1(f), then Seller shall return the Deposit to Buyer. In all other cases Seller shall retain the Deposit upon termination of this Agreement.

## **ARTICLE XI** **GENERAL PROVISIONS**

**11.1 Notices.** Unless otherwise provided herein, all notices or other communications under this Agreement must be in writing and signed by a duly authorized representative of the party giving such notice, or such other Persons as either party shall specify in a written notice to the other. All such notices shall be deemed given and received (i) if by hand delivery, upon receipt thereof; (ii) if mailed, three days after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested; (iii) as of the day received by Express mail, Federal Express, or other similar services; or (iv) upon email transmission by the sender. In the case of notices sent by email transmission, the sender shall contemporaneously send a copy of the notice to the addresses at the addresses provided for below, by an overnight courier service; however such mailing shall not alter the time at which the email notice is deemed received. The parties' notice addresses are:

If to Seller: William A. Brandt, Trustee  
San Luis & Rio Grande Railroad, Inc.  
10 South LaSalle St, Suite 330  
Chicago, Illinois 60603  
email: bbrandt@DSIConsulting.com

With a copy to: Jennifer Salisbury, Esq.  
Markus Williams Young & Hunsicker LLC  
1775 Sherman Street, Suite 1950  
Denver, CO 80203  
email: jsalisbury@markuswilliams.com

If to Buyer:

With a copy to:

**11.2 Interpretation.** As used in this Agreement, the word “including” means without limitation, the word “or” is not exclusive and the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Exhibits and Schedules mean the Articles and Sections of and the Exhibits and Schedules attached to this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect meaning or interpretation of this Agreement. The table of contents, table of defined terms and headings

contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**11.3 Successors and Assigns.**

(a) The rights and obligations of any party under this Agreement shall not be assignable by such party prior to the Closing without the written consent of the other party.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns permitted by this Section 10.4 any right, remedy or claim under or by reason of this Agreement.

**11.4 Entire Agreement; Amendments.** This Agreement and the Exhibits and Schedules referred to herein and the documents delivered pursuant hereto contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the parties hereto. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the parties hereto.

**11.5 Waivers.** Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party, it is in writing signed by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

**11.6 Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

**11.7 Execution in Counterparts; Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the parties hereto and delivered to each of the other parties hereto. Facsimile or .pdf transmissions of any executed original document and/or retransmission of any executed facsimile or .pdf transmission shall be deemed to be the same as the delivery of an executed original. At the request of either party hereto, the other party

hereto shall confirm facsimile or .pdf transmissions by executing duplicate original documents and delivering the same to the requesting party.

**11.8 Governing Law.** This Agreement and all claims relating to or arising out of it, including claims relating to its making, performance and interpretation, and the rights and liabilities of the parties hereto, shall be determined in accordance with the internal laws (as opposed to conflicts of law provisions) of the State of Colorado. As part of the consideration for new value this day received, Seller and Buyer hereby consent to the exclusive jurisdiction of any state or federal court in the city and county of Denver, Colorado. Seller and Buyer waive any objection which they may have based on lack of jurisdiction or improper venue or forum non conveniens to any suit or proceeding instituted by any other party under this Agreement in any such state or federal court and consents to the granting of such legal or equitable relief as is deemed appropriate by the court. This provision is a material inducement for Seller and Buyer to enter into this Agreement.

**11.9 Certain Definitions.**

(a) “Affiliate” of a Person shall mean (1) any other Person that directly or indirectly controls, is controlled by or is under common control with such Person or any of its subsidiaries, and (2) if such Person is an individual, any other individual that is a relative (by blood or marriage) of such Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(b) “Effective Date” shall mean the date of this Agreement.

(c) “Person” shall mean an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a trust, an unincorporated association or any other entity or organization, including a Regulatory Authority.

(d) “Regulatory Authority” shall mean any federal, state, commonwealth, municipal, local or foreign governmental or regulatory authority and the agencies, staffs, courts, tribunals, entities, boards, commissions or bodies thereof or related thereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**SELLER:**

WILLIAM A. BRANDT, JR, Chapter 11 Trustee,  
SAN LUIS & RIO GRANDE RAILROAD, INC.

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**BUYER:**

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

Name: \_

Title: \_

### **Schedule 8.1**

1. The Claims of the Internal Revenue Service (“IRS”) alleged by the IRS to be \$2,956,096.45 as of January 8, 2020 as to which the IRS has indicated that tax liens exceeding \$2,500,000.00 have been filed against the Company and its assets.
2. The Claims of certain Railworks Corporation subsidiaries set forth in Railworks Track Services, Inc. and Railworks Signals & Connections, Inc. vs. Mass Coastal Railroad, LLC, Trial Court of the Commonwealth of Massachusetts, Plymouth Superior Court, Civil Action No. 1983CV01129, in which a Claim is alleged against the Company in the principal amount of \$1,297,527.29 plus, interest, attorneys’ fees and punitive damages.
3. An Americans with Disabilities Act lawsuit Michael P. MacDonald v. Cape Cod Central Railroad, Inc., Cape Rail, Inc and P. Christopher Podgurski, United States District Court for the District of Massachusetts, CA#1:18CV12175 FDS (Plaintiff’s counsel has stated an intention to add the Company as a party defendant in the future).

Exhibit A

**ASSIGNMENT OF MEMBERSHIP INTERESTS**

This Assignment of Membership Interest is dated as of \_\_\_\_\_, 2020 between SAN LUIS & RIO GRANDE RAILROAD, INC. by and through WILLIAM A. BRANDT, JR, not personally but solely as Chapter 11 Trustee in the bankruptcy proceeding pending in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court") (In re San Luis & Rio Grande Railroad, Inc., Case No. 19-18905-TBM) ("Assignor") and\_\_\_\_\_. Assignor hereby transfers 100% of the membership interest in Massachusetts Coastal Railroad, LLC, a Massachusetts limited liability company to Assignee, and Assignee accepts such assignment.

**ASSIGNOR:**

WILLIAM A. BRANDT, JR, Chapter 11 Trustee,  
SAN LUIS & RIO GRANDE RAILROAD, INC.

\_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_,

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit B

### Assignment of Claims

Any and all claims or rights of the Trustee, if any, to the ownership of, rights held by, tradenames, licenses and permits, and intellectual property in or pertaining to Cape Rail, Inc. and/or Cape Cod Central Railroad, Inc. and/or claims of the Trustee, if any, against Cape Rail, Inc. and/or Cape Cod Central Railroad, Inc

Exhibit C

Buyer's Release of the Section 45G Tax Credits