

AGREEMENT AND PLAN OF MERGER
AND
SALE AND PURCHASE OF EQUITY INTERESTS
by and among
R. J. CORMAN RAILROAD COMPANY, LLC,
RJCMS, INC.,
RJCWMS, INC.,
RJCN, INC.
and
R. J. CORMAN RAILROAD GROUP, LLC
and
NASHVILLE & EASTERN RAILROAD CORP.,
NASHVILLE AND WESTERN RAILROAD CORP.,

246771

ENTERED
Office of Proceedings
November 9, 2018
Part of
Public Record

WILLIAM J. DRUNSIC,

dated as of October 31, 2018

[REDACTED]	
[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibits:

Exhibit A-1 NERC Plan of Merger, 1

Exhibit A-2 NWRC Plan of Merger, 2

[REDACTED]

Exhibit C Merger Filings, 4

[REDACTED]

Exhibit F-1 Charter and Bylaws, 9

Exhibit F-2 NWRC Amended Charter, 10

[REDACTED]

AGREEMENT AND PLAN OF MERGER

AND

SALE AND PURCHASE OF EQUITY INTERESTS

This Agreement and Plan of Merger and Sale and Purchase of Equity Interests (this “**Agreement**”), dated as of October 31, 2018, is entered into among R. J. Corman Railroad Company, LLC, a Kentucky limited liability company (“**Parent**”), RJCMS, Inc., a Tennessee corporation and wholly-owned indirect subsidiary of Parent (“**NERC Merger Sub**”), RJCWMS, Inc., a Tennessee corporation and a wholly-owned direct subsidiary of Parent (“**NWRC Merger Sub**”), R. J. Corman Railroad Group, LLC, a Kentucky limited liability company (“**Purchaser LLC**”), RJCN, Inc., a Tennessee corporation and a wholly-owned direct subsidiary of Parent (“**Newco**”) and, together with Parent, NERC Merger Sub, NWRC Merger Sub, and Purchaser LLC, the “**Purchaser Parties**”), Nashville & Eastern Railroad Corp., a Tennessee corporation (“**NERC**”), Nashville and Western Railroad Corp., a Tennessee corporation (“**NWRC**”), [REDACTED]

[REDACTED]
William J Drunsic (“**WJD**”),
[REDACTED]

Each of NERC, NWRC, [REDACTED] together with their respective Subsidiaries, if any, is referred to herein as a “**Company**” and, collectively as the “**Companies**”.

RECITALS

WHEREAS, the board of directors of each of NERC, NWRC, [REDACTED] (collectively, the “**Corporate Sellers**”) [REDACTED], have: (i) determined that this Agreement, and, in the case of NERC and NWRC, the plan of merger and consolidation attached as Exhibit A-1 (the “**NERC Plan of Merger**”) and the plan of merger and consolidation attached as Exhibit A-2 (the “**NWRC Plan of Merger**”) and together with the NERC Plan of Merger, the “**Plan of Merger**”) and the merger of NERC Merger Sub with and into NERC (the “**NERC Merger**”) and the concurrent merger of NWRC with and into NWRC Merger Sub (the “**NWRC Merger**”) and, together with the NERC Merger, the “**Merger**”), in each case pursuant to the Tennessee Business Corporation Act, § 48-11-101 *et seq.*, as amended (the “**TBCA**”) upon the terms and subject to the conditions set forth in this Agreement and the other transactions

contemplated hereby (including [REDACTED], as defined herein), taken together, are at a price and on terms that are fair to, advisable and in the best interest of the Companies and their respective shareholders and members (the “Equityholders”); (ii) adopted resolutions adopting this Agreement and approving and declaring advisable the execution, delivery and performance of this Agreement (including all terms and conditions set forth herein) and the transactions contemplated hereby, including [REDACTED], the Merger and the Plan of Merger; (iii) directed that this Agreement be submitted to their respective Equityholders for approval; and (iv) resolved to recommend that their respective Equityholders approve this Agreement and the transactions contemplated hereby, including the Merger and the Plan of Merger.

WHEREAS, following the execution of this Agreement, the respective boards of directors of NERC and NWRC shall seek to obtain, in accordance with Section 48-17-104 of the TBCA, their respective Equityholders’ approval of this Agreement, the Merger and the transactions contemplated hereby in accordance with Section 48-21-104 of the TBCA.

WHEREAS, the board of directors or other governing body of each of NERC Merger Sub and NWRC Merger Sub has: (i) determined that this Agreement, the Plan of Merger, and the transactions contemplated hereby, including the Merger, taken together, are at a price and on terms that are fair to, advisable and in the best interests of NERC Merger Sub and NWRC Merger Sub, as applicable and their respective sole shareholder; and (ii) adopted resolutions approving this Agreement, the Plan of Merger and the transactions contemplated hereby, including the Merger, and declaring its advisability. The sole shareholder of NERC Merger Sub and NWRC Merger Sub has adopted and approved this Agreement.

WHEREAS, the board of directors or other governing body of Newco, and Newco, as the sole shareholder of NERC Merger Sub, in each case has approved this Agreement, the Plan of Merger, the NERC Merger and the other transactions contemplated hereby.

WHEREAS, the board of directors or other governing body of Parent, and Parent, as the sole shareholder of NWRC Merger Sub, in each case has approved this Agreement, the Plan of Merger, the NWRC Merger and the other transactions contemplated hereby.

[REDACTED]

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following terms have the meanings specified or referred to in this **Article I**:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) 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.

[REDACTED]

[REDACTED]

“**Agreement**” has the meaning set forth in the **Preamble**.

[REDACTED]

“**Antitrust Law**” means the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the HSR Act, the Federal Trade Commission Act, as amended, antitrust Laws of countries other than the United States, and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“**Articles of Merger**” has the meaning set forth in **Section 2.04**.

“**Balance Sheet**” has the meaning set forth in **Section 3.06**.

“**Balance Sheet Date**” has the meaning set forth in **Section 3.06**.

“**Basket**” has the meaning set forth in **Section 8.04(a)**.

“**Benefit Plan**” has the meaning set forth in **Section 3.16(a)**.

[REDACTED]

[REDACTED]

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Nashville, Tennessee are authorized or required by Law to be closed for business.

“**Cap**” has the meaning set forth in **Section 8.04(a)**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Certificated Share**” means each Share which is evidenced by a certificate issued by NERC or NWRC (as applicable) representing an ownership interest in such Company.

“**Chapter 23**” means Chapter 23 (Sections 48-23-101 through 48-23-302) of the TBCA.

“**Closing**” has the meaning set forth in **Section 2.02**.

“**Closing Date**” has the meaning set forth in **Section 2.02**.

“**Closing Indebtedness Certificate**” means a certificate executed by the Chief Financial Officer of NERC certifying on behalf of each Company an itemized list of all outstanding Indebtedness as of the open of business on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.

“**Closing Merger Consideration**” means the NERC Closing Merger Consideration plus the NWRC Closing Merger Consideration.

“**Closing Payments**” has the meaning set forth in **Section 3.06**.

“Closing Transaction Expenses Certificate” means a certificate executed by the Chief Financial Officer of NERC certifying the amount of Transaction Expenses remaining unpaid as of the close of business on the Closing Date (including an itemized list of each such unpaid Transaction Expenses with a description of the nature of such expense and the Person to whom such expense is owed).

[REDACTED]

[REDACTED]

“Code” means the Internal Revenue Code of 1986, as amended.

“Companies’ Disclosure Letter” means the Disclosure Schedules delivered by the Companies concurrently with the execution and delivery of this Agreement.

“Company” has the meaning set forth in the **Preamble**.

“Company Continuing Employee” has the meaning set forth in **Section 5.14(a)**.

[REDACTED]

[REDACTED]

[REDACTED]

“Company Material Contracts” has the meaning set forth in **Section 3.09(a)**.

“Company Permits” means all permits, licenses, franchises, certificates, approvals, orders registrations and other similar authorizations of all Governmental Authorities required to own, lease and operate their properties and lawfully conduct the businesses of the Companies as currently conducted.

[REDACTED]

“Company Stock Rights” means any options, warrants, convertible securities, subscriptions, stock appreciation rights, phantom stock plans or stock equivalents or other rights, agreements, arrangements or commitments (contingent or otherwise) obligating a Company to issue or sell any shares of capital stock of, or options, warrants, convertible securities, subscriptions or other equity interests in the Company.

“Computers” has the meaning set forth in **Section 3.24**.

[REDACTED]

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, guarantees, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Controlled Real Property” has the meaning set forth in **Section 3.10(a)**.

“Corporate Seller” has the meaning set forth in the **Recitals**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Dissenting Shares**” means common shares of NERC or NWRC issued and outstanding immediately prior to the Effective Time (after giving effect to [REDACTED]) that are held by any holder who is entitled to demand and makes a proper demand for payment of the fair value for such common shares pursuant to, and who complies in all respects with, the provisions of Chapter 23.

“**DOJ**” has the meaning set forth in **Section 5.03(c)**.

“**Dollars**” or “**\$**” means the lawful currency of the United States.

“**Effect**” means any change, event, effect, development or circumstance.

“**Effective Time**” has the meaning set forth in **Section 2.04**.

“**Encumbrance**” means any lien, mortgage, pledge, deed of trust, security interest, charge, encumbrance or other adverse claim or interest.

“Environmental Laws” means any Laws, Governmental Order or any agreement with any Governmental Authority or other third party, relating to the environment, pollution, any hazardous or toxic substance, waste or material, or the effect of any of the foregoing on human health and safety.

“Environmental Permits” means all Company Permits relating to or required by Environmental Laws and affecting, or relating to, the business of the Companies as currently conducted.

“Equityholder” has the meaning set forth in the **Recitals**.

“Equityholder Indemnitees” has the meaning set forth in **Section 8.03**.

[REDACTED]

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“ERISA Affiliate” means all employers (whether or not incorporated) that would be treated together with any of the Companies or any of their Affiliates as a “single employer” within the meaning of Section 414 of the Code.

“Escrow Agent” means [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exchange Agent” has the meaning set forth in **Section 2.10(b)**.

“Exchange Fund” has the meaning set forth in **Section 2.10(b)**.

“Executive Order” means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism.

[REDACTED]

[REDACTED]

“FCC” has the meaning set forth in **Section 5.15**.

“Financial Statements” has the meaning set forth in **Section 3.06**.

“FIRPTA Certificates” has the meaning set forth in **Section 2.03(a)(xiii)**.

“FRA” means the United States Federal Railroad Administration.

[REDACTED]

“FTC” has the meaning set forth in **Section 5.15**

[REDACTED]

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Government Contracts” has the meaning set forth in **Section 3.09(a)(xiii)**.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules,

regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

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

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Indebtedness” means, without duplication and with respect to each Company, all (a) indebtedness for borrowed money; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Intellectual Property Rights” has the meaning set forth in **Section 3.11**.

“Interim Balance Sheet” has the meaning set forth in **Section 3.06**.

“Interim Balance Sheet Date” has the meaning set forth in **Section 3.06**.

“Interim Financial Statements” has the meaning set forth in **Section 3.06**.

“Intercompany Indebtedness” has the meaning set forth in **Section 3.06**.

“Knowledge”, or any similar expression, means the actual knowledge, or such knowledge as would reasonably be expected to be obtained following appropriate inquiry, of any Company Knowledge Person.

“Knowledge of Parent” has the meaning set forth in **Section 8.08**.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Letter of Transmittal” has the meaning set forth in **Section 2.10(c)**.

“Liabilities” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

[REDACTED]

“Losses” means losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees; *provided, however*, that **“Losses”** shall not include punitive, incidental, consequential, special or indirect damages (including loss of revenue, diminution in value and any damages based on any type of multiple).

“Majority Holder” has the meaning set forth in **Section 10.01(b)**.

[REDACTED]

[REDACTED]

“Merger” has the meaning set forth in the **Recitals**.

“Merger Consideration” has the meaning set forth in **Section 2.08(c)**.

“Merger Filings” means the filings required by the State of Tennessee in order to effect: (a) the merger of NERC Merger Sub with and into NERC as set forth in **Section 2.01(b)**, substantially in the form of Exhibit C-1; and (b) the merger of NWRC with and into NWRC Merger Sub, as set forth in **Section 2.01(c)**, substantially in the form of Exhibit C-2.

“Merger Sub” shall mean either NERC Merger Sub or NWRC Merger Sub, or both, as the context requires.

“Multiemployer Plan” has the meaning set forth in **Section 3.16(c)**.

“NERC” has the meaning set forth in the **Preamble**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**NERC Merger**” has the meaning set forth in the **Recitals**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**NERC Shares**” has the meaning set forth in **Section 2.08(a)**.

“**NERC Stock**” has the meaning set forth in **Section 2.08(a)**.

“**NERC Surviving Corporation**” means the corporation surviving the NERC Merger.

“**Newco**” has the meaning set forth in the **Preamble**.

“**NWRC**” has the meaning set forth in the **Preamble**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“NWRC Merger” has the meaning set forth in the **Recitals**.

“NWRC Merger Sub” has the meaning set forth in the **Preamble**.

“NWRC Shares” has the meaning set forth in **Section 2.08(b)**.

“NWRC Stock” has the meaning set forth in **Section 2.08(b)**.

“NWRC Surviving Corporation” means the corporation surviving the NWRC Merger.

[illegible]

[REDACTED]

“Organizational Documents” means (a) for each Corporate Seller, such Company’s Charter or articles of incorporation, as amended, and such Company’s current bylaws, [REDACTED]

“Outside Termination Date” has the meaning set forth in **Section 9.01(b)(iii)**.

“Owned Real Property” has the meaning set forth in **Section 3.10(a)**.

“Parent” has the meaning set forth in the **Preamble**.

“Parent Indemnitees” has the meaning set forth in **Section 8.02**.

[REDACTED]

“Permitted Encumbrances” has the meaning set forth in **Section 3.01(b)**.

“Permitted Investments” has the meaning set forth in **Section 2.10(b)**.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

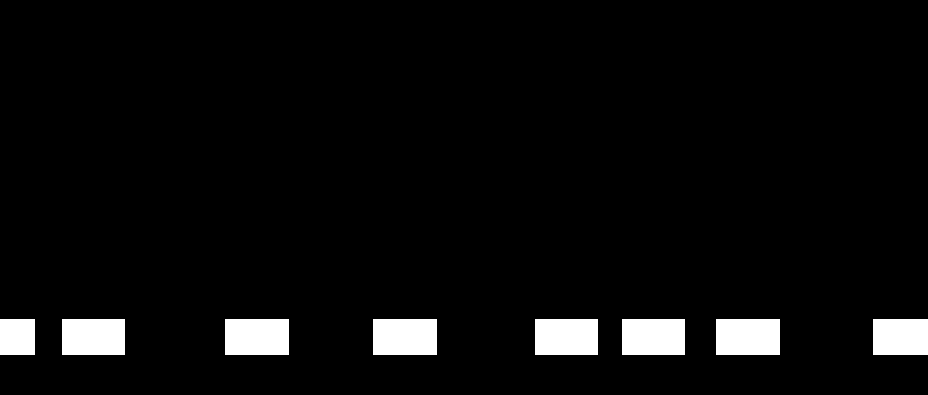
“Plan of Merger” has the meaning set forth in the **Recitals**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Purchaser LLC**” has the meaning set forth in the **Preamble**.

“**Purchaser Parties**” has the meaning set forth in the **Preamble**.

[REDACTED]

“**Real Property**” means, for each Company, the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

“**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 environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

[REDACTED]

[REDACTED]

[REDACTED]

“**Reviewed Financial Statements**” has the meaning set forth in **Section 3.06**.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Shares**” has the meaning set forth in **Section 2.08(c)**.

“Tennessee Secretary” has the meaning set forth in **Section 2.04**.

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

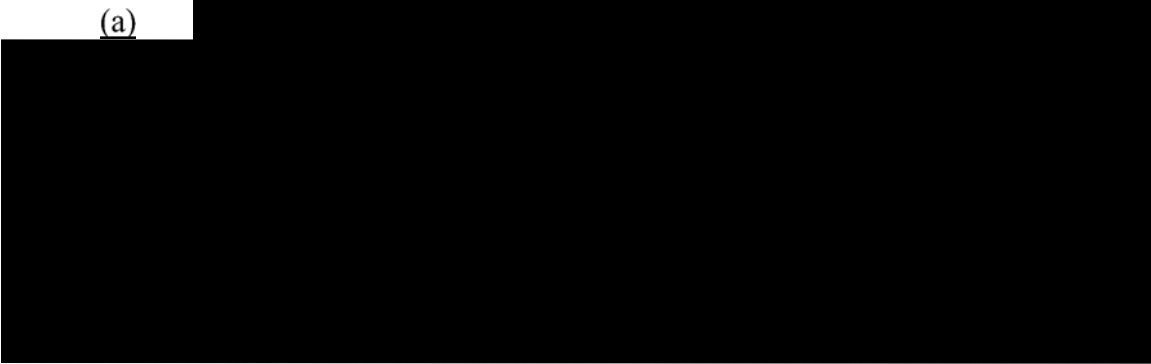
[REDACTED]

[REDACTED]

“WJD” has the meaning set forth in the Preamble.

ARTICLE II
THE MERGER AND TRANSFER OF THE EQUITY INTERESTS

Section 2.01 The Merger and Transfer of Equity Interests.

(a) 

(b) Upon the terms and subject to the conditions set forth in this Agreement and the Plan of Merger, at the Effective Time, NERC Merger Sub shall be merged with and into NERC in accordance with the TBCA, whereupon the separate existence of NERC Merger Sub shall cease and NERC shall continue as the NERC Surviving Corporation under the Laws of the State of Tennessee, in accordance with the Merger Filings attached hereto as Exhibit C-1.

(c) Upon the terms and subject to the conditions set forth in this Agreement and the Plan of Merger, at the Effective Time, NWRC shall be merged with and into NWRC Merger Sub in accordance with the TBCA, whereupon the separate existence of NWRC shall cease and NWRC Merger Sub shall continue as the NWRC Surviving Corporation under the Laws of the State of Tennessee, in accordance with the Merger Filings attached hereto as Exhibit C-2.

(d) The Merger shall have the effects set forth in Section 48-21-108 of the TBCA and other applicable Law. Accordingly, from and after the Effective Time, (i) the NERC Surviving Corporation and the NWRC Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the TBCA; (ii) the NERC Surviving Corporation shall possess all rights, privileges, immunities and franchises of each of NERC and NERC Merger Sub; and (iii) the NWRC Surviving Corporation shall be responsible and liable for all liabilities and obligations of NWRC and NWRC Merger Sub.

(e) 

(f)

(g)

Section 2.02 **Closing.** Subject to the terms and conditions of this Agreement, the closing of the Merger (the “**Closing**”) shall take place at 11:00 a.m., local time, on the date that is the second Business Day after all conditions to Closing set forth in **Section 5.15** (other than [REDACTED], and conditions which, by their nature, are to be satisfied at the Closing) have been satisfied or waived (but, unless mutually agreed by Parent and the Stockholder Representative, not earlier than January 2, 2019), [REDACTED]

Section 2.03 **Closing Deliverables.**

(a) At or prior to the Closing (as may be specifically set forth below), NERC, NWRC [REDACTED] shall deliver to Parent the following:

(i) prior to the Closing, [REDACTED] Documents [REDACTED] fully executed by the respective parties thereto;

(ii) the Escrow Agreement duly executed by Stockholder Representative;

(iii) [REDACTED]

(vi) resignations of the directors and officers of NERC, NWRC, [REDACTED] [REDACTED] respectively, pursuant to **Section 5.06**;

(vii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(ix) a certificate, dated the Closing Date and signed by a duly authorized officer of each Company, that each of the conditions set forth in **Section 7.02(a)** and **Section 7.02(b)** have been satisfied;

(x) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Company certifying that (A) attached thereto are true and complete copies of (1) all resolutions adopted by the Company's board of directors authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements (as applicable) and the consummation of the transactions contemplated hereby and thereby and (2) resolutions of the shareholders of NERC and NWRC approving the Merger and the other transactions contemplated by this Agreement and adopting this Agreement, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(xi) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Company certifying the names and signatures of the officers of such Company authorized to sign this Agreement, the Ancillary Agreements and the other documents to be delivered hereunder and thereunder;

(xii) a good standing certificate (or its equivalent) from the Secretary of State or similar Governmental Authority of the jurisdiction under the Laws in which each Company is organized;

(xiii) a duly executed FIRPTA certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the "**FIRPTA Certificates**") that the Selling Parties are not foreign persons within the meaning of Section 1445 of the Code.

(xiv) at least three (3) Business Days prior to the Closing, the Closing Transaction Expenses Certificate;

(xv) at least three (3) Business Days prior to the Closing, the Closing Indebtedness Certificate;

(xvi) [REDACTED]
[REDACTED]

(xvii) [REDACTED]
[REDACTED]

(xix) the corporate minutes, books and records of each Company along with a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each

Company certifying that the corporate minutes, books and records of each Company are all such written records in the possession of the Companies.

(xx) such other documents or instruments as Parent reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(b) At or prior to the Closing (as may be specifically set forth below), Parent shall deliver to the Stockholder Representative (or such other Person as may be specified herein), for the benefit of the Companies and the Equityholders the following:

(i) the Escrow Agreement duly executed by Parent;

(ii)

(xii) a certificate, dated the Closing Date and signed by a duly authorized officer of Company, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied;

(xiii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each of the Purchaser Parties certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors (or equivalent governing body) of the applicable Purchaser Party authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(xiv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each of the Purchaser Parties certifying the names and signatures of the officers of the applicable Purchaser Party authorized to sign this Agreement, the Ancillary Agreements and the other documents to be delivered hereunder and thereunder; and

(xv) such other documents or instruments as the Companies reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(c)



(iii)



[REDACTED]

Section 2.04

[REDACTED]

Section 2.05 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the TBCA. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of NERC and NERC Merger Sub shall vest in the NERC Surviving Corporation, all property, rights, privileges, immunities, powers, franchises, licenses and authority of NWRC and NWRC Merger Sub shall vest in the NWRC Surviving Corporation, all debts, liabilities, obligations, restrictions and duties of NERC and NERC Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the NERC Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of NWRC and NWRC Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the NWRC Surviving Corporation.

Section 2.06 Charter; By-laws.

(a) At the Effective Time, pursuant to the Merger, the charter of NERC shall be amended and restated in the form attached hereto as Exhibit F-1 to read as did the charter of NERC Merger Sub immediately prior to the Effective Time, except that the name of the corporation set forth in Article I shall be “Nashville & Eastern Railroad Corp.” Thereafter,

the charter of the NERC Surviving Corporation may be amended in accordance with its terms and as provided by Law.

(b) At the Effective Time, pursuant to the Merger, the bylaws of NERC shall be amended and restated to read as did the bylaws of NERC Merger Sub immediately prior to the Effective Time, except that the name of the corporation shall be “Nashville & Eastern Railroad Corp.” Thereafter, the bylaws of the NERC Surviving Corporation may be amended in accordance with their terms and the charter of the NERC Surviving Corporation and as provided by Law.

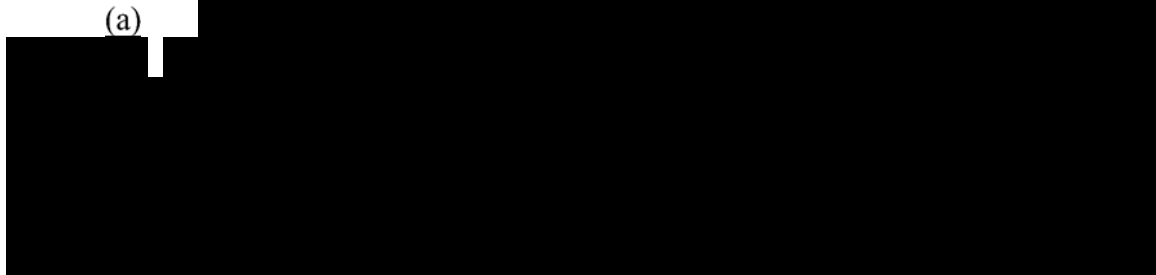
(c) At the Effective Time, pursuant to the Merger, the charter of NWRC shall be amended and restated in the form attached hereto as Exhibit F-2 to read as did the charter of NWRC Merger Sub immediately prior to the Effective Time, except that the name of the corporation set forth in Article I shall be “Nashville and Western Railroad Corp.” Thereafter, the charter of the NWRC Surviving Corporation may be amended in accordance with its terms and as provided by Law.

(d) At the Effective Time, pursuant to the Merger, the bylaws of NWRC shall be amended and restated to read as did the bylaws of NWRC Merger Sub immediately prior to the Effective Time, except that the name of the corporation shall be “Nashville and Western Railroad Corp.” Thereafter, the bylaws of the NWRC Surviving Corporation may be amended in accordance with their terms and the charter of the NWRC Surviving Corporation and as provided by Law.

Section 2.07 Directors and Officers. The officers of NERC Merger Sub and NWRC Merger Sub, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the officers, respectively, of the NERC Surviving Corporation and NWRC Surviving Corporation, respectively, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the respective certificates of incorporation and bylaws of the NERC Surviving Corporation and NWRC Surviving Corporation.

Section 2.08 Effect of the Merger on NERC Stock and NWRC Stock. At the Effective Time, as a result of the Merger and without any action on the part of Parent, NERC Merger Sub, NWRC Merger Sub, NERC, NWRC or the holders of any of the following securities:

(a)



[REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

Section 2.09 [REDACTED]

[REDACTED]

Section 2.10

Surrender and Payment of Merger Consideration.

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

[REDACTED]

(e)

[REDACTED]

(f)

[REDACTED]

(g)

[REDACTED]

(h) [REDACTED]

Section 2.11

In accordance with the Escrow Agreement,

(a) [REDACTED]
[REDACTED] ; and

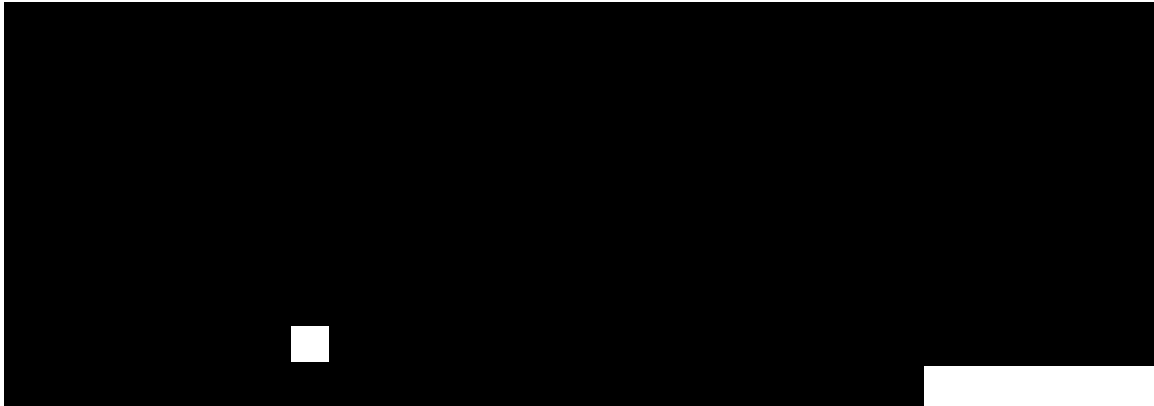
(b) [REDACTED]

Section 2.12

Partnership Rights in Common Stock of

Section 2.13

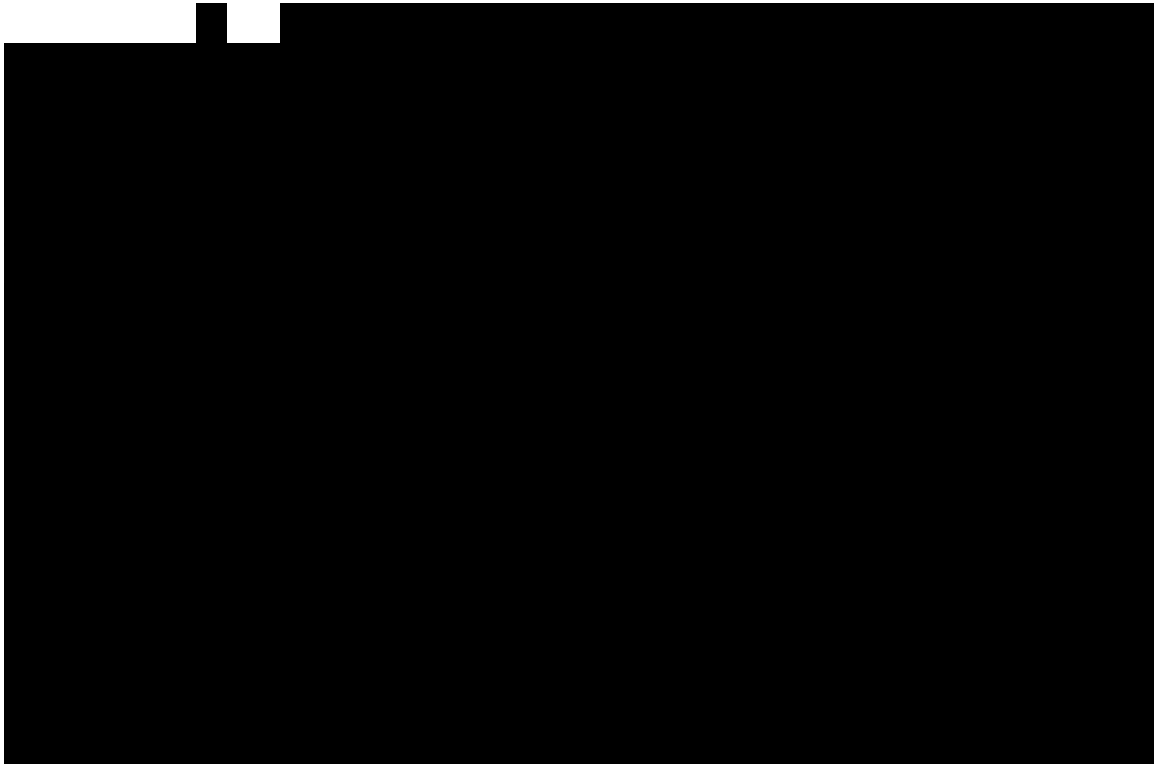
Section 2.14



Section 2.15 **Lost Certificates.** If any certificate representing ownership interests in a Company shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim that may be made against it with respect to such certificate, the Exchange Agent shall issue, in exchange for such lost, stolen or destroyed certificate, the Merger Consideration to be paid in respect of the Shares formerly represented by such certificate as contemplated under this **Article II**.

Section 2.16 [REDACTED]

(a) [REDACTED]



[REDACTED]

[REDACTED]

(b)

[REDACTED]

[REDACTED]

[REDACTED]

(c)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the Stockholder Representative (on behalf of the Seller Parties), on the one hand, and by Parent, on the other hand, based upon the percentage that the amount actually contested but not awarded to the Stockholder Representative or Parent, respectively, bears to the aggregate amount actually contested by the Stockholder Representative and Parent.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the [REDACTED] shall be conclusive and binding upon the parties hereto.

(d) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) [REDACTED]

Section 2.17 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d)

(e)

(f)

(g)

(h)

Section 2.18

(a)



(b) In the event Parent or either Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger, or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume all of the obligations set forth in this **Section 2.18**.

(c) [REDACTED]

Section 2.19 [REDACTED].

(a) [REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES

[REDACTED]

Section 3.01 Organization and Good Standing.

(a) The Company (i) is a corporation or other legal entity, duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its jurisdiction of incorporation or formation, except where any failure of any such Company to be so organized, existing or in good standing has not had and would not reasonably be expected to have a Company Material Adverse Effect, (ii) has full corporate or similar power and authority to own, lease and operate its properties and assets and to conduct its business as presently conducted, except where any failure to have such power or authority, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Company Material Adverse Effect, and (iii) is duly qualified or licensed to do business as a foreign corporation and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed has not had and would not reasonably be expected to have a Company Material Adverse Effect.

(b) The Company has heretofore furnished (or made available to Parent in certain “data rooms” in connection with Parent’s consideration and review of the transactions contemplated hereby) a complete and correct copy of its Organizational Documents. The Company is not in violation of any of the provisions of the Company’s Organizational Documents and will not be in violation of any of the provisions of the Company’s Organizational Documents, as such Organizational Documents may be amended (subject to **Section 5.01**) between the date hereof and the Closing Date, except where such failure would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.02 Authority and Capacity.

(a) The Company has all necessary corporate or limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements, to perform its obligations hereunder and to consummate the Merger and the other transactions contemplated by this Agreement (including [REDACTED]). The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements (as applicable), and the consummation by the Company of the Merger and the other transactions contemplated by this Agreement (including [REDACTED]) have been duly authorized by all necessary corporate or limited liability company action (including, for each Corporate Seller, the approval of the Company’s board of directors) and no other corporate or limited liability company proceedings on the part of the Company, and no other votes or approvals of any class or series of capital stock or membership interests of the Company, are necessary to authorize this Agreement, the Ancillary Agreements and the Plan of Merger, or to consummate the Merger or the other transactions contemplated hereby (including [REDACTED]) (other than, with

respect to the consummation of the Merger and the approval of this Agreement and the Plan of Merger, [REDACTED]). This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited against the Company by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and any implied covenant of good faith and fair dealing, or remedies in general, as from time to time in effect, or (ii) the exercise by courts of equity powers. When each Ancillary Agreement to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Agreement will constitute a legal and binding obligation of the Company enforceable against it in accordance with its terms.

(b) [REDACTED]

Section 3.03 No Conflict; Required Consents.

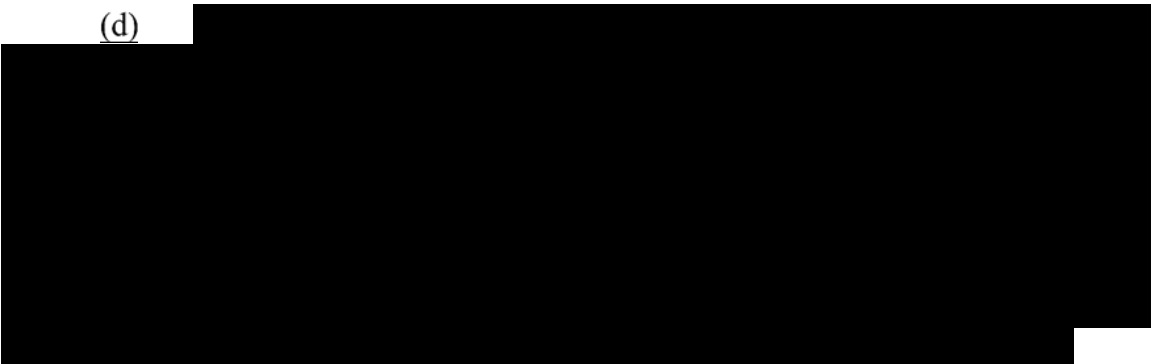
(a) The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements to which it is a party, and the consummation of the Merger and the other transactions contemplated hereby and thereby (including the NERC Consolidation), do not and will not: (i) result in a violation or breach of any provision of the Company's Organizational Documents; (ii) subject to, in the case of the Merger, obtaining [REDACTED] and the approvals referenced in **Section 3.03(b)**, result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company; or (iii) except as set forth in **Section 3.03** of the Companies' Disclosure Letter, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Company Material Contract, except in the cases of clauses (ii) and (iii), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Company Material Adverse Effect.

(b) The execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company and the consummation of the Merger and the other transactions contemplated by this Agreement will not, require any action, consent, approval, authorization or permit of, or filing with or notification to, or registration or qualification with, any Governmental Authority, except for the Local Regulatory Approvals and applicable requirements, if any, of state securities laws or “blue sky” laws, the HSR Act, the STB, and filing and recordation of the Articles of Merger as required by the TBCA, the Federal Communications Commission and such other consents, approvals, authorizations, permits, filings and notifications that would not reasonably be expected to have a Company Material Adverse Effect.

(c)



(d)



Section 3.04 Capitalization; Title to Equity Interests.

(a) The authorized capital stock or membership interest, as applicable, of the Company, issued and outstanding as of the close of business on the date of this Agreement, is set forth in **Section 3.04(a)** of the Companies’ Disclosure Letter.

(b) The anticipated authorized capital stock or membership interest, as applicable, of the Company, issued and outstanding  immediately prior to the Effective Time, is set forth on Exhibit G.

(c) There are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any Shares or Company Stock Rights or to pay any dividend or make

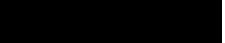
any other distribution in respect thereof. There are no voting trusts or other agreements or understandings to which the Company is a party with respect to the voting of stock or other equity interests of the Company.

(d)



Section 3.05



Section 3.06 Financial Statements. Complete copies of the reviewed financial statements of each company  consisting of the balance sheet of the Company as at December 31 in each of the years 2015, 2016 and 2017 and the related statements of income, Equityholders' equity and cash flow for the years then ended (the "**Reviewed Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company  as at June 30, 2018 and the related statements of income, Equityholders' equity and cash flow for the six-month period then ended (the "**Interim Financial Statements**" and together with the Reviewed Financial Statements, the "**Financial Statements**") have been delivered to Parent. Except as noted in the Accountant's Report and Notes to the Reviewed Financial Statements and in **Section 3.06** of the Companies' Disclosure Letter, the Financial Statements have been prepared in all material respects in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Reviewed Financial Statements). Except as noted in the Accountant's Report and the notes to the Reviewed Financial Statements, the Financial Statements are based on the books and

records of the Company, and fairly present in all material respects, in accordance with GAAP the financial condition of the Company, as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2017 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**” and the balance sheet of the Company as of June 30, 2018 is referred to herein as the “**Interim Balance Sheet**” and the date thereof as the “**Interim Balance Sheet Date**”.

Section 3.07 Undisclosed Liabilities. The Company does not have any Liabilities of a type required to be reflected on a balance sheet in accordance with GAAP, except: (i) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (ii) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which have not or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.08 Absence of Certain Changes, Events and Conditions.

(a) Since the Interim Balance Sheet Date, except as contemplated by, or as disclosed in, this Agreement and the Companies’ Disclosure Letter, the Company has conducted its business in the ordinary course consistent with past practice.

(b) There has not been (i) since the Interim Balance Sheet Date and prior to the date of this Agreement, any action taken by the Company that, if taken during the period from the date of this Agreement through the Effective Time without the consent of Parent, would constitute a breach of **Section 5.01** (other than as required to effect [REDACTED] or as set forth in **Section 3.08(b)** of the Companies’ Disclosure Letter), or (ii) since the Interim Balance Sheet Date, any Effect that has had or would reasonably be expected to have a Company Material Adverse Effect.

(c) Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company, any action by or on behalf of the Company to make, change or rescind any material Tax election, amend any material Tax return, take any action, omit to take any action or enter into any other transaction that would have the effect of materially increasing the Tax liability or materially reducing any Tax asset of the Purchaser Parties in respect of any Post-Closing Tax period.

Section 3.09 Material Contracts.

(a) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)

[REDACTED]

(c) The Company has furnished to Parent true and complete copies of each Company Material Contract.

Section 3.10 Title to Properties.

(a) **Section 3.10(a)** of the Companies' Disclosure Letter sets forth: (i) milepost summaries of the main line railroad tracks and ancillary properties controlled by the Company ("**Controlled Real Property**"), (ii) expiration dates (if any) with respect to all Controlled Real Property; and (iii) all real property owned by the Company ("**Owned Real**

Property”), other than, in each case, Controlled Real Property and Owner Real Property that constitutes Excluded Assets.

(b) Except as has not had and reasonably would not be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company has, with respect to each parcel of Owned Real Property, good and valid title, and, with respect to each parcel of Controlled Real Property, a good and valid leasehold, easement, right of way, trackage rights, license or other interest or otherwise has a valid right of possession, use or access which is sufficient to permit such Persons to operate as railroads or conduct such business as is currently conducted or carried on without undue charge or expense, in each case free and clear of all Encumbrances, except for (i) mechanics’, carriers’, workmen’s, warehousemen’s, repairmen’s or other like Encumbrances imposed by applicable Law arising or incurred in the ordinary course of business; (ii) Encumbrances for taxes, assessments and other governmental charges and levies that are not due and payable or that may thereafter be paid without interest or penalty; (iii) Encumbrances affecting the interest of the grantor of any easements benefiting any Owned Real Property or Controlled Real Property which were not granted by or consented to by the Company; (iv) Encumbrances, minor defects or irregularities in title, easements, rights-of-way, covenants, restrictions, and other, similar matters that would not, individually or in the aggregate, reasonably be expected to materially impair the continued use and operation of the assets to which they relate in the business of the Company as presently conducted; (v) zoning, building and other similar codes and regulations; (vi) Encumbrances arising in the ordinary course of business under worker’s compensation, unemployment insurance, social security, retirement and similar legislation; (vii) other statutory liens securing payments not yet due; (viii) Encumbrances, covenants, restrictions and other, similar matters set forth in those Company Permits and other agreements set forth in **Section 3.10(b)** of the Companies’ Disclosure Letter; and (ix) any matters of public record or that would be disclosed by a current, accurate survey, a railroad valuation map or physical inspection of the assets to which they relate, provided any such matters would not, individually or in the aggregate, reasonably be expected to materially impair the continued use and operation of the assets to which they relate in the business of the Company as presently conducted (collectively, “**Permitted Encumbrances**”).

(c) Except as has not had, and would not reasonably be expected to have a Company Material Adverse Effect and as set forth on **Section 3.10(c)** of the Companies’ Disclosure Letter, the Company has not received written notice of any condemnation proceeding or proposed action or agreement for taking in lieu of condemnation, nor is any such proceeding, action or agreement pending or, to the Knowledge of the Company, threatened in writing, with respect to any portion of any Owned Real Property or Controlled Real Property.

(d) The Company has good title to, or a valid leasehold interest in, all of its tangible personal properties and assets, in each case free and clear of all Encumbrances, except Encumbrances set forth in **Section 3.10(d)** of the Companies’ Disclosure Letter and Encumbrances that would not, individually or in the aggregate, reasonably be expected to

materially impair the continued use and operation of the tangible personal properties and assets to which they relate in the business of the Company as presently conducted.

(e) There are no unrecorded contracts and/or options pursuant to which the Company has granted to any third party the right to purchase the Owned Real Property, or any part thereof.

(f) The Company is not a “foreign person” within the meaning of Section 1445(f) of the Code.

(g) To the Knowledge of the Company, there is no pending, proposed or threatened proceeding for the rezoning of any Owned Real Property or Controlled Real Property or, respectively, any portion thereof.

(h) To the Knowledge of the Company, there are no tax abatements, special tax assessments (payable in annual installments or otherwise) or tax exemption affecting the Owned Real Property or the Controlled Real Property, except as set forth in **Section 3.10(h)** of the Companies’ Disclosure Letter.

(i) Neither the Company nor any of its constituents or affiliates: (i) is a Prohibited Person; (ii) is conducting or will conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (iii) is dealing or otherwise engaging in or will deal in or otherwise engage in any transaction relating to any property or interests in property blocked pursuant to the Executive Order; or (iv) is engaging in or conspiring to or will engage in or conspire to engage in any transaction that evades or avoids, has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

Section 3.11 Intellectual Property. **Section 3.11** of the Companies’ Disclosure Letter sets forth, as of the date of this Agreement, (i) a true and complete list of all patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, domain name registrations and registered copyrights and applications therefor (collectively, and together with unregistered intellectual property rights, “**Intellectual Property Rights**”) that, in each case, are material to the conduct of the business of any Company or the Companies taken as a whole, as presently conducted and, except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company owns, or is licensed or otherwise has the right to use, each such scheduled Intellectual Property Right; (ii) a schedule of any action to be taken before or within six (6) months following the Closing Date to maintain, renew or preserve such Intellectual Property Rights; (iii) copies of any valuation analysis of such Intellectual Property Rights, individually or in aggregate; and (iv) identification of any confidential information owned by third parties licensed by Company or in Company’s possession and material to the conduct of the business of any

Company or the Companies taken as a whole. To the Knowledge of the Company, the conduct of the business of the Company as currently conducted does not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any Person, and no claims are pending or, to the Knowledge of the Company, threatened that the Company is infringing the rights of any Person with regard to any Intellectual Property Right, except for such infringements, misappropriations, violations and claims which have not had and reasonably would not be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of the Company, as of the date of this Agreement, no Person is infringing the rights of the Company with respect to any Intellectual Property Right, in a manner that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.12 Insurance. The Company maintains insurance (or is covered as an additional insured on another Company's policy) with reputable insurers for the business and assets of the Company against all risks normally insured against, and in amounts normally carried by, corporations of similar size engaged in similar lines of business. Except as would not reasonably be expected to have a Company Material Adverse Effect, all insurance policies and bonds with respect to the business and assets of the Company are in full force and effect and will be maintained by the Company in full force and effect as they apply to any matter, action or event relating to the Company occurring through the Effective Time, and the Company has not reached or exceeded applicable policy limits for any insurance policies in effect at any time during the past five (5) years. The Company has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such insurance policies. All premiums due on such insurance policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each insurance policy. The insurance policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company. All such insurance policies: (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. Except as set forth in **Section 3.12** of the Companies' Disclosure Letter, there are no claims related to the business of the Company pending under any such insurance policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. The Company is not in default under, and has not otherwise failed to comply with, in any material respect, any provision contained in any such insurance policy. The Company is an additional named insured on certain policies of insurance issued to certain regional transportation authorities as set forth in **Section 3.12** of the Companies' Disclosure Letter and, to the Knowledge of the Company, the representations in this **Section 3.12** are true and correct with respect to such policies.

Section 3.13 Legal Proceedings; Governmental Orders.

(a) **Section 3.13** of the Companies' Disclosure Letter sets forth a list of all pending or, to the Knowledge of the Company, threatened Actions against each Company

or any accident or incident that could reasonably be expected to result in or give rise to an Action. There are no Actions (or, to the Knowledge of the Company, any basis therefor) pending, or any accident or incident that could reasonably be expected to result in or give rise to an Action, or, to the Knowledge of the Company, threatened against or affecting the Company or its directors, officers or employees in their capacity as such, or, to the Knowledge of the Company, any other Person for whom the Company may be liable, which, if determined adversely, would, solely or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(b) There are no Governmental Orders, solely or in the aggregate, outstanding against the Company or its businesses, assets or properties that would reasonably be expected to have a Company Material Adverse Effect.

(c) There is no Action pending, or, to the best knowledge, information and belief of the Company, threatened, against or affecting the Company or the owners of the Company which could materially and adversely affect the Company's ability to carry out the transactions contemplated hereunder.

Section 3.14 **Compliance With Laws; Permits.**

(a) The Company holds all Company Permits and is in compliance with the terms of such Company Permits, except where the failure to hold or be in compliance with such Company Permits would not reasonably be expected to have a Company Material Adverse Effect. The business of the Company has not, since December 31, 2014, and is not being conducted in violation of any Law or Governmental Order, except for violations that would not reasonably be expected to have a Company Material Adverse Effect.

(b) No investigation or review by any Governmental Authority with respect to the Company or its businesses is pending or, to the Knowledge of the Company, threatened and, to the Knowledge of the Company, no basis exists for any such investigation or review that reasonably would be expected to have a Company Material Adverse Effect.

(c) Except as would not reasonably be expected to have a Company Material Adverse Effect, all applications required to have been filed for the renewal of the Company Permits have been duly filed on a timely basis and all other material filings required to have been made with respect to the Company Permits have been duly made on a timely basis with the applicable Governmental Authority or as required by any applicable Law, and no Company has received any written notice, nor to the Knowledge of the Company any oral notice, from any Governmental Authority that states that any pending or currently issued Company Permit will not be granted or will not be granted without material amendments or modifications.

Section 3.15 **Environmental Matters.**

(a) Except as disclosed in **Section 3.15(a)** of the Companies' Disclosure Letter or would not reasonably be expected to have, individually or in the aggregate, a Company

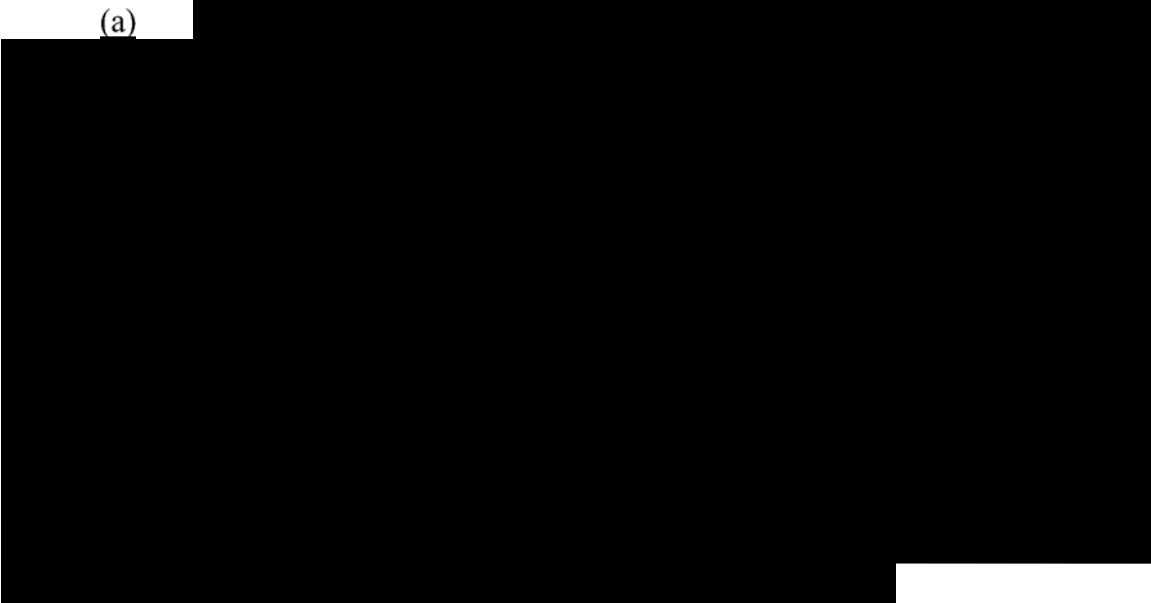
Material Adverse Effect: (i) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no investigation, action, claim, suit, proceeding or review (or any basis therefor) is pending or, to the Knowledge of the Company, is threatened by any Governmental Authority or other Person relating to the Company and relating to, or arising out of, any Environmental Law or relating to Hazardous Materials; (ii) the Company is in compliance with all Environmental Laws and all Environmental Permits necessary for the business of the Company; (iii) there are no Liabilities of the Company arising from any act or omission of the Company under or relating to any Environmental Law or any Hazardous Material arising from any act or omission of the Company and there is no condition, occurrence, situation or set of circumstances, including the release of any Hazardous Material arising from any act or omission of the Company, that reasonably would be expected to result in or be the basis for any such Liabilities; (iv) the Company is not obligated to conduct or pay for, and is not conducting or paying for, any response or corrective action under any Environmental Law at any location; (v) the Company is not party to any order, judgment or decree that imposes any obligations under any Environmental Law; and (vi) to the Knowledge of the Company the Owned Real Property and Controlled Real Property are free from any Hazardous Materials, except for such Hazardous Materials that are present in the ordinary course of business in material compliance with Environmental Law.

(b) To the Knowledge of the Company, there has been no environmental investigation, study, audit, test, review or other analysis conducted in relation to the current or prior business of the Company or any property or facility now or previously owned or leased by the Company that has not been made available to Parent.

Section 3.16

Employee Benefit Matters.

(a)



(b)



(c)



(d)



[REDACTED]

(e) [REDACTED]

(f) [REDACTED]

(g) [REDACTED]

(h) [REDACTED]

[REDACTED]

(i)

[REDACTED]

(i)

[REDACTED]

(k)

[REDACTED]

(l)

[REDACTED]

Section 3.17 Employment Matters.

(a) Section 3.17(a) of the Companies' Disclosure Letter contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current

annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in **Section 3.17(a)** of the Companies' Disclosure Letter, as of the date hereof, all compensation, including wages, commissions and bonuses, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the date hereof have been paid in full (or accrued in full on the balance sheet contained in the Closing Working Capital Statement) and there are no outstanding agreements, understandings or commitments (whether formal or informal, written or unwritten) of the Company with respect to any compensation, commissions or bonuses.

(b)



(c) Since December 31, 2014, the Company has not effectuated (i) a "plant closing" as defined in the WARN Act affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company; or (ii) a "mass layoff" as defined in the WARN Act affecting any site of employment or facility of the Company. Since December 31, 2014, the Company has not been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any Law similar to the WARN Act.

Section 3.18 Taxes.

(a) For all open tax years, the Company:

(i) has timely paid or caused to be paid all Taxes required to be paid by it, other than Taxes being contested in good faith by appropriate procedures as set forth in **Section 3.18** of the Companies' Disclosure Letter; and

(ii) has filed or caused to be filed in a timely and proper manner (taking into account any extension of time within which to file) all Tax Returns required to be filed by such entities with the appropriate Governmental Authority in all jurisdictions in which Tax Returns are required to be filed, and all such Tax Returns are complete and correct in all material respects.

(b) The Company has made available to Parent complete and correct copies of all United States federal income Tax Returns and material federal and state Tax Returns filed by or on behalf of the Company for all taxable periods beginning on or after December 31, 2014.

(c) [REDACTED]

(d) There are no material Tax audits, examinations, investigations or other claims or assessments pending or threatened in writing against the Company.

(e) Except as would not, individually or in the aggregate, be reasonably expected to result in a Company Material Adverse Effect, no Encumbrances for Taxes have been filed against the Company, except for Encumbrances for Taxes (i) not yet due and payable, or (ii) being contested in good faith by appropriate procedures as set forth in **Section 3.18** of the Companies' Disclosure Letter.

(f) Since December 31, 2014, no material unresolved deficiencies or additions to Taxes have been proposed, asserted, or assessed in writing against the Company.

(g) There are not currently in force any waivers, agreements or other arrangements extending the period for assessment or collection of any Taxes (including any applicable statute of limitation) by or on behalf of the Company.

(h) No claim has been made in writing by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(i) No private letter rulings, technical advice memoranda or similar rulings have been requested by or with respect to the Company, or entered into or issued by any taxing authority with respect to the Company.

(j) The Company is not, and has not ever been, a party to, or bound by, any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar agreement.

(k) Except as required as a result of the NERC Consolidation and the Merger, the Company shall not 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:

(i) any change in method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code executed on or before the Closing Date; or

(v) any election under Section 108(i) of the Code.

(l) Since December 31, 2014, the Company has not constituted either a “distributing corporation” or a “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code.

(m) Since December 31, 2014, except as may result from [REDACTED], the Company (i) is not and has not ever been a member of an affiliated group (other than a group the common parent of which is a Company) filing a consolidated federal income Tax Return, and (ii) does not have any liability for Taxes of any person arising from the application of Treasury Regulation Section 1.1502-6 or any analogous provision of Law, or as a transferee or successor, by contract or otherwise.

(n) The Company has complied in all material respects with all applicable Laws relating to the payment and withholding of Taxes and has properly and timely withheld all material Taxes required to be withheld by the Company in connection with amounts paid or owing to any employee, former employee, independent contractor, creditor, shareholder, Affiliate, customer, supplier or other Person. The Company has properly and timely paid all such withheld Taxes to the appropriate Governmental Authority or has properly set aside such withheld amounts in accounts for such purpose.

(o) The Company is not, and has not been, a party to a “reportable transaction” within the meaning of Section 6707A of the Code and Treasury Regulation Section 1.6011-4(b).

(p)

[REDACTED]

(q)

[REDACTED]

(r)

(s)

Section 3.19 Related Party Transactions. Except as set forth in **Section 3.19** of the Companies' Disclosure Letter, no executive officer or director of the Company or any person owning five percent (5%) or more of the Company's shares or membership interests (or any of such person's immediate family members or Affiliates or associates) is a party to any Contract with or binding upon the Company or any of its assets, rights or properties or has any interest in any property owned by the Company or has engaged in any transaction with any of the foregoing within the last twelve (12) months.

Section 3.20 Brokers. Except as set forth in **Section 3.20** of the Companies' Disclosure Letter and as reflected in the Transaction Expenses on the Closing Transaction Expenses Certificate, which list the broker to be paid by the Corporate Sellers, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Agreement based upon arrangements made by or on behalf of the Company.

Section 3.21 Material Customers.

[REDACTED]

Section 3.22 Material Suppliers.

[REDACTED]

Section 3.23 Board Recommendation. The board of directors of the Company, at a meeting duly called and held (or, if the Company is not a corporation, the Company's manager) has (a) approved this Agreement (including all terms and conditions set forth herein) and the transactions contemplated hereby, including, in the case of NERC and NWRC, the Plan of Merger and the Merger, and (b) in the case of NERC and NWRC, (i) determined that the Merger is advisable and that the terms of the Merger are fair to, and in the best interests of, such Company's Equityholders, and (ii) resolved to recommend that the Company's Equityholders approve and adopt this Agreement and the Plan of Merger.

Section 3.24 Computers and Software. To the Knowledge of the Company, the desktop and laptop computers, servers (real or virtual), workstations and other computing devices owned by the Company, and/or operated for the benefit of the Company (collectively, "**Computers**") are in good working order and no unauthorized software is installed on the Computers.

Section 3.25 No Other Representation or Warranty.

[REDACTED]



ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER PARTIES

The Purchaser Parties jointly and severally represent and warrant to the Company that the statements contained in this **Article IV** are true and correct as of the date hereof.

Section 4.01 Organization and Good Standing. Each of NERC Merger Sub, NWRC Merger Sub and Newco is a corporation duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its jurisdiction of incorporation, and each of Parent and Purchaser LLC is a limited liability company duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its jurisdiction of formation, except where any failure to be so organized, existing or in good standing would not reasonably be expected to have a Parent Material Adverse Effect. Each of the Purchaser Parties (i) has full corporate or limited liability company power and authority and all necessary governmental approvals to own, lease and operate its properties and assets and to conduct its business as presently conducted, except where any failure to have such power or authority would not reasonably be expected to have a Parent Material Adverse Effect; and (ii) is duly qualified or licensed to do business as a foreign corporation or limited liability company (as applicable) and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not reasonably be expected to have a Parent Material Adverse Effect.

Section 4.02 Authority for Agreement. Each of the Purchaser Parties has all necessary corporate or limited liability company power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the Merger (in the case of Parent, NERC Merger Sub and NWRC Merger Sub) and the other transactions contemplated by this Agreement. The execution, delivery and performance by the Purchaser Parties of this Agreement, and the consummation by Parent, NERC Merger Sub, and NWRC Merger Sub of the Merger and the consummation by the Purchaser Parties of the other transactions contemplated by this Agreement and the Plan of Merger, have

been duly authorized by all necessary corporate and/or limited liability action and no other corporate or limited liability company proceedings on the part of any of the Purchaser Parties, and no other votes or approvals of any class or series of capital stock or membership interest of any of the Purchaser Parties, are necessary to authorize this Agreement and the Plan of Merger or to consummate the Merger or the other transactions contemplated hereby. This Agreement has been duly executed and delivered by each of the Purchaser Parties and, assuming the due authorization, execution and delivery by the Seller Parties constitutes a legal, valid and binding obligation of the Purchaser Parties enforceable against the Purchaser Parties in accordance with its terms, except as enforcement thereof may be limited against any of the Purchaser Parties by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and any implied covenant of good faith and fair dealing, or remedies in general, as from time to time in effect, or (ii) the exercise by courts of equity powers.

Section 4.03 No Conflicts; Required Filings and Consents.

(a) The execution and delivery of this Agreement by the Purchaser Parties do not, and the performance of this Agreement by the Purchaser Parties and the consummation of the Merger and the other transactions contemplated by this Agreement will not: (i) conflict with or violate Parent's certificate of incorporation or bylaws, or the equivalent charter documents of the other Purchaser Parties; (ii) assuming that all consents, approvals and authorizations contemplated by **Section 4.03(b)** below have been obtained, and all filings described therein have been made, conflict with or violate any Law or Governmental Order applicable to Parent or its Subsidiaries or by which any material property or asset of Parent or any of its Subsidiaries is bound or affected; (iii) require any consent or other action by any Person under, result in a breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, give to others (immediately or with notice or lapse of time or both) any right of termination, amendment, acceleration or cancellation of, result (immediately or with notice or lapse of time or both) in triggering any payment or other obligations pursuant to, or result in the loss of any right or benefit to which Parent or any of its Subsidiaries is entitled under, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any of its Subsidiaries is a party or by which Parent or any of its Subsidiaries, or any material property or asset of Parent or any of its Subsidiaries, is bound or affected; or (iv) result (immediately or with notice or lapse of time or both) in the creation of an Encumbrance on any material property or asset of Parent or its Subsidiaries, except in the case of clauses (ii), (iii) and (iv) above for any such conflicts, violations, breaches, defaults or other occurrences that would not reasonably be expected to have a Parent Material Adverse Effect.

(b) The execution and delivery of this Agreement by the Purchaser Parties do not, and the performance of this Agreement by Purchaser Parties will not, require any consent, approval, authorization or permit of, or filing with or notification to, or registration

or qualification with, any Governmental Entity, except for applicable requirements, if any, of the Securities Act, the Exchange Act, state securities laws or “blue sky” laws or any national or regional securities exchange or market system on which the securities of Parent are listed, Local Regulatory Approvals, the HSR Act, the STB, the Federal Communications Commission and filing and recordation of the Articles of Merger, as required by the TBCA and such other consents, approvals, authorizations, permits, filings and notifications that would not reasonably be expected have a Parent Material Adverse Effect.

Section 4.04

Section 4.05

Section 4.06

Section 4.07

Section 4.08 Solvency of the Surviving Corporations Following Merger. As of the Effective Time, assuming (a) satisfaction of the conditions to Parent’s obligation to consummate the Merger, or waiver of such conditions; (b) the accuracy of the representations and warranties of the Seller Parties in this Agreement (without giving effect to any materiality or “Company Material Adverse Effect” qualifiers) and compliance by the Seller Parties with the covenants contained in this Agreement; and (c) any estimates, projections or forecasts of the Companies have been prepared in good faith based upon assumptions that were and continue to be reasonable, immediately after giving effect to the transactions contemplated by this Agreement,

[REDACTED]

Section 4.09 **Prohibited Person.**

[REDACTED]

Section 4.10

[REDACTED]

ARTICLE V

COVENANTS

Section 5.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as required to effect the [REDACTED] or as otherwise provided in this Agreement or consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), each Company covenants that it shall (i) conduct the business of the Company in the ordinary course of business consistent with past practice; and (ii) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, except as required to effect the [REDACTED] or as otherwise provided in this Agreement, disclosed in **Section 5.01** of the Companies' Disclosure Letter or consented to in writing by Parent (which consent shall not be unreasonably withheld or delayed), from the date hereof until the Closing Date, each Company covenants that it shall:

- (a) preserve and maintain all of its Company Permits;
- (b) pay its debts, Taxes and other obligations when due;
- (c) maintain the properties and assets owned, operated or used by it in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (d) continue in full force and effect, without modification, all insurance policies, except as required by applicable Law;
- (e) defend and protect its properties and assets from infringement or usurpation;
- (f) perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (g) maintain its books and records in accordance with past practice;
- (h) not change its Tax accounting methods, principles or practices, except as required by GAAP or applicable laws, but the Company may continue to deviate from GAAP in accordance with past practices as disclosed in the Reviewed Financial Statements;
- (i) not make or change any material Tax election, settle or compromise any material Tax Liability, fail to file any material Tax Return when due, enter any closing agreement, file any materially amended material Tax Return or surrender any right to claim a material Tax refund, offset or other reduction in Tax Liability, except as required by applicable Law or as recommended by the Company's independent auditors;
- (j) comply in all material respects with all applicable Laws;
- (k) not take or permit any action that would cause any of the changes, events or conditions described in **Section 3.08** to occur; and

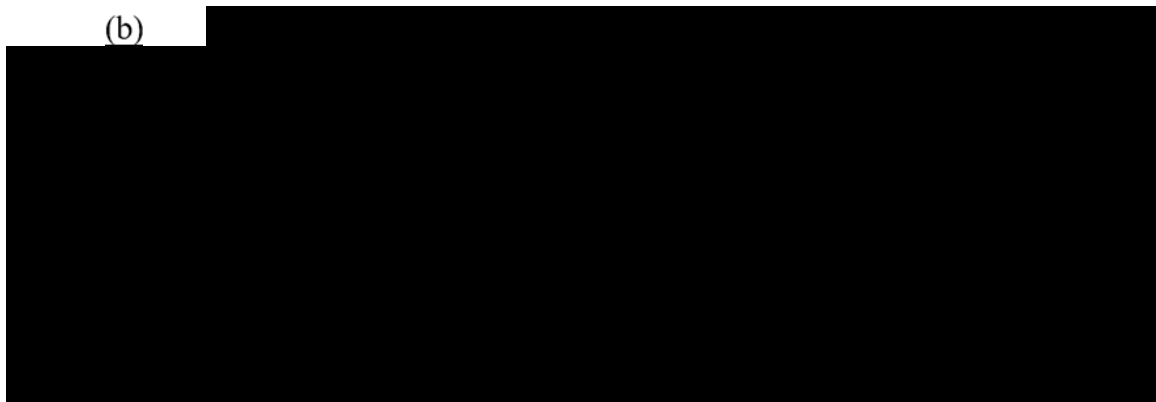
(l) adopt, amend or terminate any Benefit Plan, except as otherwise required specifically by this Agreement.



Section 5.02 Access to Information.

(a) From the date hereof to the Effective Time the Companies shall, and shall cause the Representatives of the Companies to: (i) afford the Representatives of Parent and Merger Sub, upon not less than two (2) days' prior written notice, reasonable access during normal business hours to the officers, employees, agents (including outside accountants), properties, offices and other facilities, books and records of the Companies; and (ii) furnish to Parent and its Representatives such financial and operating data and other information as such Persons may reasonably request subject, however, to Antitrust Laws. Notwithstanding the foregoing related to the Companies, none of the Companies shall be obligated to provide any such access or information to the extent that doing so: (i) would be reasonably likely to cause a waiver of an attorney-client privilege or loss of attorney work product protection; (ii) would constitute a violation of any applicable Law; or (iii) would violate any agreement in effect on the date hereof with a third-party to which a Company is a party (it being agreed that the parties shall use their reasonable best efforts to cause such access or information to be provided in a manner that does not cause such waiver, loss or violation including by making substitute arrangements). Neither Parent nor any of its Representatives shall be permitted to perform any onsite procedure (including any intrusive onsite environmental investigation), other than ordinary course operational visits for integration planning, with respect to any property of the Companies without the Companies' consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b)



[REDACTED]

(c) No investigation pursuant to this **Section 5.02** shall affect any representation or warranty in this Agreement of any party hereto or any condition to the obligations of the parties hereto.

Section 5.03 Best Efforts to Consummate Merger; Notification.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Purchaser Parties and the Seller Parties agrees to use its best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable to fulfill all conditions applicable to such party pursuant to this Agreement and to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement (including the [REDACTED]), including: (i) obtaining all necessary, proper or advisable actions or non-actions, waivers, consents, qualifications and approvals from Governmental Authorities (including the Local Regulatory Approvals) and making all necessary, proper or advisable registrations, filings and notices and taking all steps as may be necessary to obtain an approval, waiver or exemption from any Governmental Authority (including under, if applicable, the HSR Act, and from the STB); (ii) obtaining all necessary, proper or advisable consents, qualifications, approvals, waivers or exemptions from non-governmental third parties; and (iii) executing and delivering any additional documents or instruments necessary, proper or advisable to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement and the Ancillary Agreements.

(b) Without limiting the foregoing, Parent and the Companies shall, as soon as possible, but in any event within fifteen (15) Business Days of the date hereof, file with the STB the appropriate and necessary documentation for the approval or exemption, as the case may be, of the Merger and the transactions contemplated hereby. Parent shall bear its own costs for the preparation of such filings and responding to any inquiries or information requests, if applicable, and Parent shall be responsible for the payment of any applicable filing fees. Parent, Merger Sub and the Companies shall cooperate with one another (i) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such approval or exemption, and (ii) in keeping the other party reasonably informed of the status of any communications with, and any inquiries or requests for additional information from, the STB, regarding any of the transactions contemplated hereby. Subject to **Section 5.03(c)**, Parent and the Companies shall permit the Companies and Parent, respectively, to review prior to filing, all documents proposed by Parent or Merger Sub or the Companies, respectively, to be filed with the STB, any other Governmental Authority or any court to secure approval or exemption of the transactions contemplated hereby.

(c) In addition to and without limiting the foregoing, Parent, Merger Sub and the Companies shall cooperate with one another (i) in promptly determining whether any filings or other submissions are required to be or should be made or consents, approvals, permits or authorizations are required to be or should be obtained under the HSR Act or any other federal, state or foreign Law or regulation, or whether any consents, approvals or waivers are required to be, or should be, obtained from other parties to loan agreements or other contracts or instruments material to the Companies' business in connection with the consummation of the transactions contemplated by this Agreement; (ii) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such consents, permits, authorizations, approvals or waivers; and (iii) in keeping the other party reasonably informed, including by providing the other party with a copy of any communication received by such party from, or given by such party to, the Federal Trade Commission (the "FTC"), the Antitrust Division of the Department of Justice (the "DOJ") or any other U.S. or foreign Governmental Authority, of any communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby.

(d) Notwithstanding the foregoing, the Companies and Parent may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this **Section 5.03** as "Antitrust Counsel Only Material." Such materials and the information contained therein shall be given only to the Antitrust Law outside counsel of the recipient and will not be disclosed by outside counsel to employees, officers, directors or consultants of the recipient or any of its Affiliates unless express permission is obtained in advance from the source of the materials (the Companies or Parent as the case may be) or its legal counsel. Each of the Companies and Parent shall direct their respective Antitrust Law outside counsels to comply with this **Section 5.03**. Notwithstanding anything to the contrary in this **Section 5.03**, materials provided to the other party or its counsel may be redacted to remove references concerning the valuation of the Companies and privileged communications.

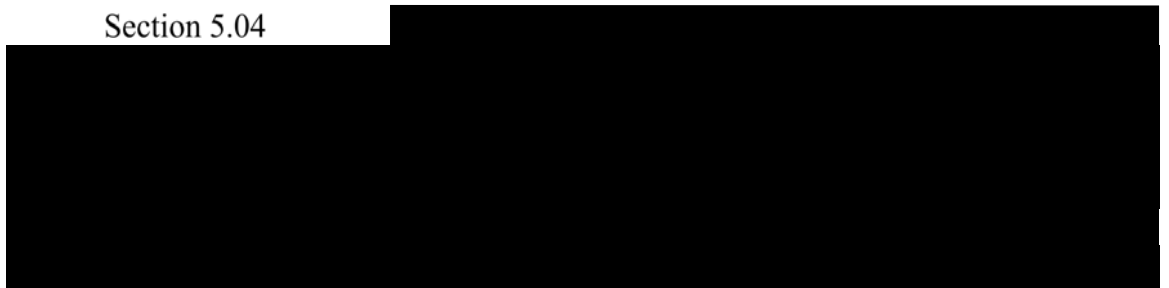
(e) In furtherance and not in limitation of the covenants of the parties contained in this **Section 5.03**, if any objections are asserted with respect to the transactions contemplated hereby under any Antitrust Law or if any suit is instituted (or threatened to be instituted) by the FTC, the DOJ, the STB or any other applicable Governmental Authority or any private party challenging any of the transactions contemplated hereby as violative of any Antitrust Law, or which would otherwise prevent, materially impede or materially delay the consummation of the transactions contemplated hereby, each of the Purchaser Parties and the Companies shall use best efforts to (i) resolve any such objections or suits so as to permit consummation of the transactions contemplated by this Agreement, including in order to resolve such objections or suits which, in any case if not resolved, could reasonably be expected to prevent, materially impede or materially delay the consummation of the Merger or the other transactions contemplated hereby; and (ii) avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority with respect to the Merger so as to enable the Closing to occur

as soon as reasonably possible, including (A) proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of such assets or businesses of Parent or its Subsidiaries or Affiliates or of any Company, and (B) otherwise taking or committing to take actions that after the Closing Date would limit the freedom of Parent or its Subsidiaries' (including the NERC Surviving Corporation's or NWRC Surviving Corporation's) freedom of action with respect to, or its ability to retain, one or more of its or its Subsidiaries' (including the NERC Surviving Corporation's or NWRC Surviving Corporation's) businesses, product lines or assets, in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any suit or proceeding which would otherwise have the effect of preventing or materially delaying the Closing.

(f) In the event that any administrative or judicial action or proceeding is instituted (or threatened to be instituted) against any of the Purchaser Parties or the Companies or any of their respective directors or officers by a Governmental Authority challenging the Merger or any other transaction contemplated by this Agreement, or any other agreement contemplated hereby, each of the Purchaser Parties and the Companies shall cooperate fully with each other, and use respective best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement.

(g) The Companies shall promptly notify Parent of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, (ii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement, and (iii) any actions, suits, claims, litigations, investigations or proceedings commenced or, to its Knowledge, threatened against, relating to or involving or otherwise affecting any Company or any Company's board of directors, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to this Agreement, or that relate to this Agreement or the transactions contemplated by this Agreement, and the Companies shall reasonably consult with Parent with respect to (and allow Parent to participate in) the defense or settlement of any such action, suit, claim, litigation, investigation or proceeding, and no settlement thereof shall be agreed to without Parent's prior written consent.

Section 5.04





Section 5.05 Notice of Certain Events.

(a) From the date hereof until the Closing, the Companies shall promptly notify Parent in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by any Company hereunder not being true and correct; or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to the Knowledge of the Companies, threatened against, relating to or involving or otherwise affecting any Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to **Section 3.13** or that relates to the consummation of the transactions contemplated by this Agreement.

(b)



Section 5.06

[REDACTED]

Section 5.07

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

(e)

Section 5.08 **Closing Conditions.** From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Section 5.15** hereof.

Section 5.09 **Public Announcements.** Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of

this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed) and the parties shall cooperate as to the timing and contents of any such announcement.

Section 5.10 No Control of the Other Party's Business. Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Companies' operations prior to the Effective Time, and nothing contained in this Agreement shall give the Companies, directly or indirectly, the right to control or direct Parent's or its Subsidiaries' operations prior to the Effective Time. Prior to the Effective Time, each of the Companies and Parent shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 5.11 Anti-Takeover Statutes. If any Anti-Takeover Statute is or may become applicable to this Agreement (including the Merger and the other transactions contemplated hereby), each of the Companies and Parent and their respective boards of directors, if applicable, shall grant all such approvals and take all such actions as are necessary so that such transactions may be consummated as promptly as practicable hereafter on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

Section 5.12

Section 5.13

Section 5.14

(a)

[REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(f) [REDACTED]

[REDACTED]

Section 5.15

[REDACTED]

Section 5.16

[REDACTED]

**ARTICLE VI
TAX MATTERS**

Section 6.01 **Tax Covenants.**

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

[REDACTED]

(e)

[REDACTED]

(f)

[REDACTED]

Section 6.02

Tax Indemnification.

(a)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

(c) [REDACTED]

[REDACTED]

[REDACTED]

(d) [REDACTED]

Section 6.03 [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

Section 6.04 [REDACTED]

(a) [REDACTED]

(b)



(c)



(d)



Section 6.05



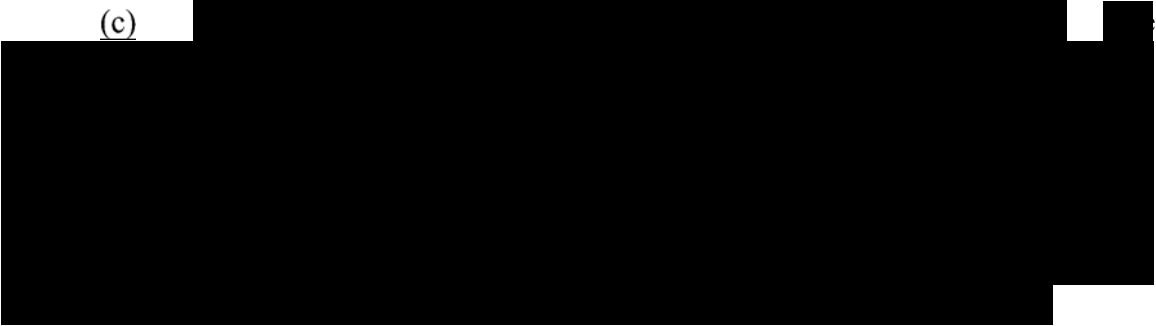
(a)



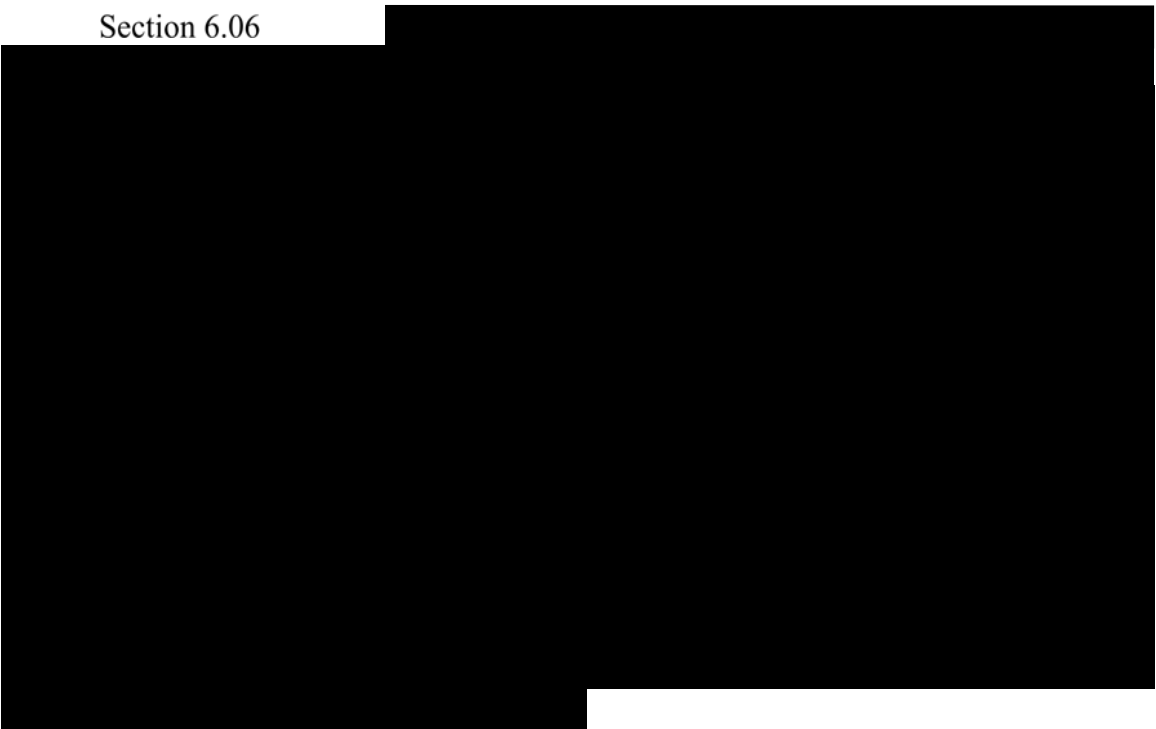
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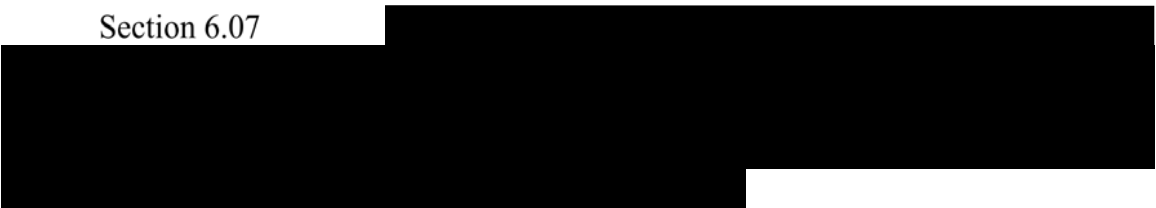
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Section 6.06

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Section 6.09

ARTICLE VII

CONDITIONS TO CLOSING

Section 7.01 **Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver, on or prior to the Closing Date, of each of the following conditions:

(a) [REDACTED]

(b) [REDACTED]

(c) **No Governmental Orders.** No Law or Governmental Order (whether temporary, preliminary or permanent) shall have been enacted, issued, promulgated, enforced or entered that is in effect and that prevents or prohibits consummation of the Merger.

(d) **Proceedings.** There shall not have been instituted or pending any action or proceeding by any Governmental Authority challenging or seeking to make illegal, to delay materially or otherwise to restrain or prohibit the consummation of the Merger or seeking to obtain material damages with respect to the Merger.

(e) **STB.** Final approval of, or exemption by, the STB with respect to the transactions contemplated hereby shall have been obtained.

(f) **HSR Act Requirements.** The applicable waiting periods, together with any extensions thereof, under the HSR Act (if applicable) shall have expired or been terminated.

(g) [REDACTED]

(h) **Consents.** The Companies shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 3.03** and Parent shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in **Section 4.03** (including the [REDACTED])

[REDACTED]), in each case, in form and substance reasonably satisfactory to Parent and the Companies, and no such consent, authorization, order and approval shall have been revoked.

Section 7.02 Additional Conditions to Obligations of Purchaser Parties. The obligations of the Purchaser Parties to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Parent's waiver, on or prior to the Closing Date, of each of the following conditions:

(a) [REDACTED]

(b) **Agreements and Covenants.** The Seller Parties shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date. Parent shall have received a certificate signed by the Chief Financial Officer of NERC on behalf of the Companies to that effect.

(c) **Closing Deliveries.** The Seller Parties shall have delivered each of the closing deliverables set forth in **Section 2.03(a)**.

Section 7.03 Additional Conditions to Obligations of the Companies. The obligations of the Companies to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Companies' waiver, on or prior to the Closing Date, of each of the following conditions:

(a) [REDACTED]

(b) **Agreements and Covenants.** Parent shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date. The Companies shall have received a certificate signed by the Chief Financial Officer of Parent to that effect.

(c) **Closing Deliverables.** Parent shall have delivered each of the closing deliverables set forth in **Section 2.03(b)**.

ARTICLE VIII INDEMNIFICATION

Section 8.01 **Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in **Section 3.18** which are subject to **Article VI**) shall survive the Closing and shall remain in full force and effect until [REDACTED] from the Closing Date; *provided that* [REDACTED]

[REDACTED]

Section 8.02

[REDACTED]

(a) [REDACTED]

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

Section 8.03

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

Section 8.04

[REDACTED]

(a)

[REDACTED]

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

(e) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would reasonably be expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(f)

[REDACTED]

[REDACTED]

(g) [REDACTED]

Section 8.05 [REDACTED]

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

(c) [REDACTED]

[REDACTED]

(d)

[REDACTED]

Section 8.06

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

Section 8.07

Section 8.08

Section 8.09

ARTICLE IX**TERMINATION, AMENDMENT AND WAIVER**

Section 9.01 **Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Stockholder Representative (on behalf of the Seller Parties) and Parent;

(b) by Parent or the Stockholder Representative (on behalf of the Seller Parties) if:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions

contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable;

[REDACTED]

[REDACTED]

(c) by Parent by written notice to the Stockholder Representative if:

(i) none of the Purchaser Parties is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by a Company pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by the Company within [REDACTED] of the Companies' receipt of written notice of such breach from Parent; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.02** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Termination Date, unless such failure shall be due to the failure of Parent to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(d) by the Stockholder Representative (on behalf of the Companies and the Equityholders) by written notice to Parent if:

(i) no Company is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by any of the Purchaser Parties pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by the Purchaser Parties [REDACTED] of Parent's receipt of written notice of such breach from the Companies; or

(ii) any of the conditions set forth in **Section 7.01** or **Section 7.02** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Termination Date, unless such failure shall be due to the failure of the Company to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing.

Section 9.02

[REDACTED]

Section 9.03

[REDACTED]

Section 9.04 Amendment. This Agreement may be amended by the parties in writing by action of their respective boards of directors [REDACTED] and the individual Seller Parties at any time before or after the [REDACTED] has been obtained and prior to the consummation of the NERC Consolidation; *provided, however*, that after the [REDACTED] shall have been obtained, no such amendment, modification or supplement shall be made which, by Law, requires the further approval of the Companies' Equityholders without such further approval. This Agreement may not be amended, changed or supplemented or otherwise modified except by an instrument in writing signed on behalf of all of the parties.

Section 9.05 Extension; Waiver. At any time prior to the Effective Time, the Seller Parties acting through the Stockholder Representative and the Purchaser Parties acting through Parent may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained in this Agreement or in any document delivered pursuant to this Agreement, or (c) subject to the provisions of **Section 9.04**, waive compliance with any of the agreements or conditions of the other parties contained in this Agreement. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

ARTICLE X
MISCELLANEOUS

Section 10.01 Stockholder Representative.

(a) By approving this Agreement and the transactions contemplated hereby or by executing and delivering a Letter of Transmittal, each Equityholder shall have irrevocably authorized and appointed Stockholder Representative as such Person's representative and attorney-in-fact to act on behalf of such Person with respect to this Agreement and the Escrow Agreement and to take any and all actions and make any decisions required or permitted to be taken by Stockholder Representative pursuant to this Agreement or the Escrow Agreement, including the exercise of the power to:

(i) give and receive notices and communications;

(ii)

(iii) agree to, negotiate, enter into settlements and compromises of, and comply with orders or otherwise handle any other matters described in [REDACTED];

(iv) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to claims for indemnification made by Parent pursuant to **Article VI** or **Article VIII**;

(v) litigate, arbitrate, resolve, settle or compromise any claim for indemnification pursuant to Article VI or Article VIII;

(vi) execute and deliver all documents necessary or desirable to carry out the intent of this Agreement and any Ancillary Agreement (including the Escrow Agreement);

(vii) make all elections or decisions contemplated by this Agreement and any Ancillary Agreement (including the Escrow Agreement);

(viii) engage, employ or appoint any agents or representatives (including attorneys, accountants and consultants) to assist Stockholder Representative in complying with its duties and obligations; and

(ix) take all actions necessary or appropriate in the good faith judgment of Stockholder Representative for the accomplishment of the foregoing.

Parent shall be entitled to deal exclusively with Stockholder Representative on all matters relating to this Agreement (including **Article VIII**) and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Equityholder by Stockholder Representative,

and on any other action taken or purported to be taken on behalf of any Equityholder by Stockholder Representative, as being fully binding upon such Person. Notices or communications to or from Stockholder Representative shall constitute notice to or from each of the Equityholders. Any decision or action by Stockholder Representative hereunder, including any agreement between Stockholder Representative and Parent relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of all Equityholders and shall be final, binding and conclusive upon each such Person. No Equityholder shall have the right to object to, dissent from, protest or otherwise contest the same. The provisions of this Section, including the power of attorney granted hereby, are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of any one or Equityholders, or by operation of Law, whether by death or other event.

(b) The Stockholder Representative may resign at any time and may be removed for any reason or no reason by the vote or written consent of a majority in interest of the Equityholders according to each Equityholder's Pro Rata Share (the "**Majority Holders**"); *provided, however*, in no event shall Stockholder Representative resign or be removed without the Majority Holders having first appointed a new Stockholder Representative who shall assume such duties immediately upon the resignation or removal of Stockholder Representative. In the event of the death, incapacity, resignation or removal of Stockholder Representative, a new Stockholder Representative shall be appointed by the vote or written consent of the Majority Holders. Notice of such vote or a copy of the written consent appointing such new Stockholder Representative shall be sent to Parent, such appointment to be effective upon the later of the date indicated in such consent or the date such notice is received by Parent; *provided* that until such notice is received, Parent, Merger Sub, the NERC Surviving Corporation and the NWRC Surviving Corporation shall be entitled to rely on the decisions and actions of the prior Stockholder Representative as described in **Section 10.01(a)** above.

(c) The Stockholder Representative shall not be liable to the Equityholders for actions taken pursuant to this Agreement or the Escrow Agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted gross negligence or involved fraud, intentional misconduct or bad faith (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by Stockholder Representative shall be conclusive evidence of good faith). The Equityholders shall [REDACTED], [REDACTED], indemnify and hold harmless Stockholder Representative from and against, compensate it for, reimburse it for and pay any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with its activities as Stockholder Representative under this Agreement and the Escrow Agreement (the "**Representative Losses**"), in each case as such Representative Loss is suffered or incurred; *provided* that in the event it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by the gross negligence, fraud, intentional misconduct or bad faith of Stockholder Representative,

Stockholder Representative shall reimburse the Equityholders the amount of such indemnified Representative Loss attributable to such gross negligence, fraud, intentional misconduct or bad faith. The Representative Losses shall be satisfied from the Equityholders, [REDACTED]

Section 10.02 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 10.02**):

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Section 10.04 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as

originally contemplated to the fullest extent possible. Notwithstanding the foregoing, the parties intend that the provisions of **Article IX**, including the remedies, and limitations thereon, be construed as integral provisions of this Agreement and that such provisions, remedies and limitations shall not be severable in any manner that diminishes a party's rights hereunder or increases a party's liability or obligations hereunder.

Section 10.05 Entire Agreement; No Third Party Beneficiaries. This Agreement (including the Plan of Merger) and the Confidentiality Agreement (a) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter of this Agreement, and (b) are not intended to and do not confer upon any Person other than the parties hereto any rights or remedies hereunder, other than (i) the Persons intended to benefit from the provisions of **Section 5.07** [REDACTED]

[REDACTED] (ii) the right of a Company on behalf of the Company's respective Equityholders to pursue damages in the event of any of the Purchaser Parties' willful or intentional breach of this Agreement (a claim with respect to which shall be enforceable only by such Company, in its sole and absolute discretion, on behalf of the Companies' Equityholders); (iii) the right of NERC and/or NWRC Equityholders to receive the Merger Consideration and (as applicable) the payments contemplated by **Section 2.08, Section 2.16, Section 2.18** and **Section 5.14(f)** hereof after the Closing (a claim with respect to which may not be made unless and until the Effective Time shall have occurred pursuant to **Article II**); (iv) [REDACTED]

Section 10.06 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned or delegated, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties, except that NERC Merger Sub's or NWRC Merger Sub's rights and obligations may be assigned to and assumed by Parent or any other corporation directly or indirectly wholly owned by Parent; *provided, however*, that any such assignment does not affect the economic or legal substance of the transactions contemplated hereby. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit

of, and be enforceable by, the parties and their respective successors and assigns Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 10.07 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TENNESSEE, WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF.

Section 10.08 Consent to Jurisdiction; Venue.

(a) Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the state courts of Tennessee and to the jurisdiction of the United States District Court for the Middle District of Tennessee, in Nashville, for the purpose of any action arising out of or relating to this Agreement and the Confidentiality Agreement, and each of the parties hereto irrevocably agrees that all claims in respect to such action may be heard and determined exclusively in any Tennessee state or federal court sitting in the State of Tennessee. Each of the parties hereto agrees that a final judgment in any action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto irrevocably consents to the service of any summons and complaint and any other process in any other action relating to the Merger, on behalf of itself or its property, by the personal delivery of copies of such process to such party. Nothing in this **Section 10.08** shall affect the right of any party hereto to serve legal process in any other manner permitted by Law.

Section 10.09 Waiver of Trial by Jury. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, OR RELATING TO, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS **Section 10.09**.

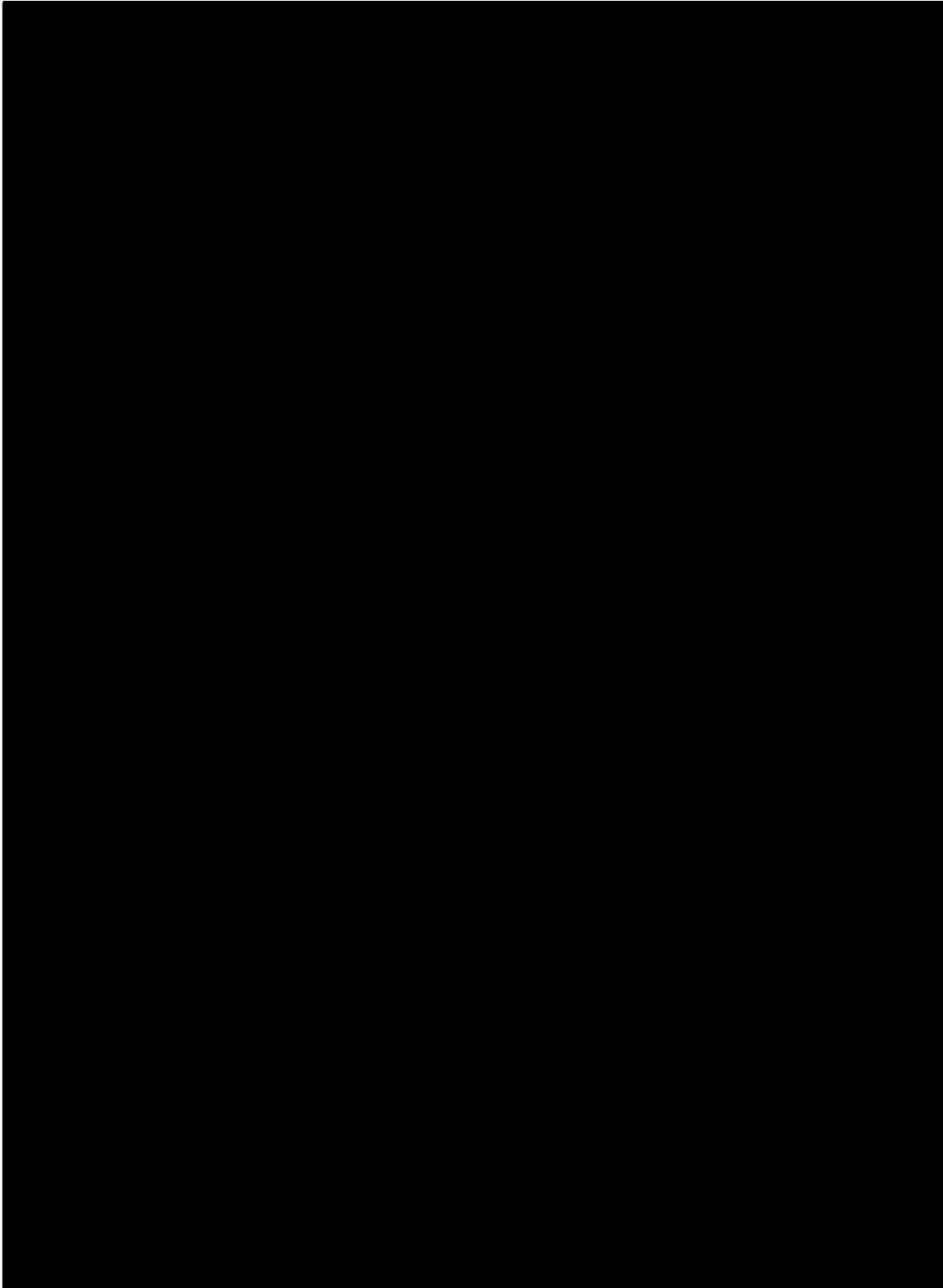
Section 10.10 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any state or federal court sitting in the State of Tennessee, without proof of actual damages and without any requirement to provide any bond or other security, this being in addition to any other remedy to which they are entitled at Law or in equity. Notwithstanding the foregoing, the parties hereby further acknowledge and agree that prior to the termination of this Agreement, the Seller Parties shall be entitled to seek specific performance to cause Parent to effect the Closing in accordance with **Section 2.02**, on the terms and subject to the conditions in this Agreement, if, but only if, (a) all conditions set forth in **Section 7.01** and **Section 7.02** (other than those conditions that by their terms are to be satisfied at the Closing so long as such conditions would be satisfied if the Closing Date were the date on which the Company is seeking specific performance) have been satisfied, and (b) Purchaser Parties fail to complete the Closing by the date the Closing is required to have occurred pursuant to **Section 2.02**.

Section 10.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (including by facsimile or other electronic transmission) to the other parties.

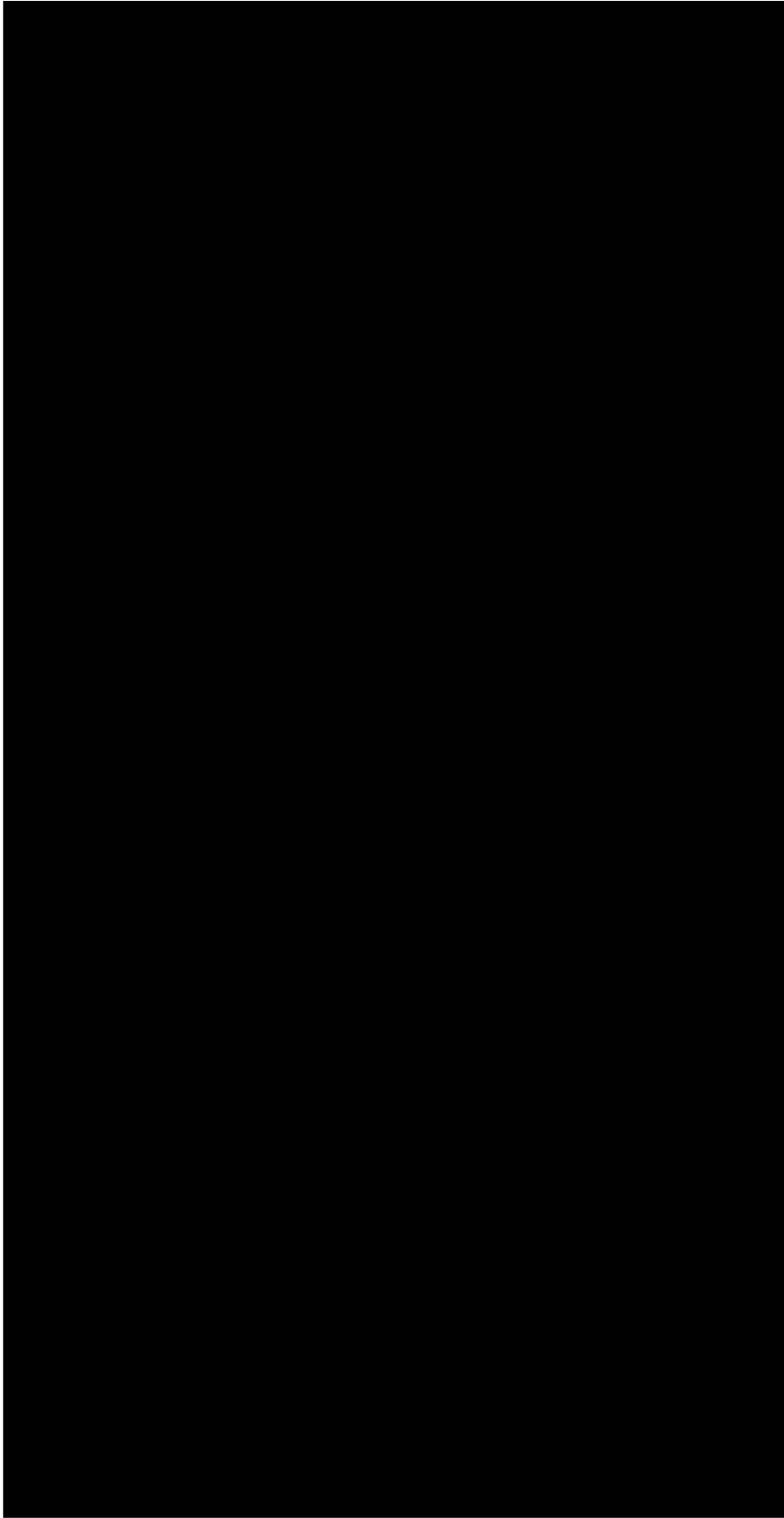
[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER PARTIES



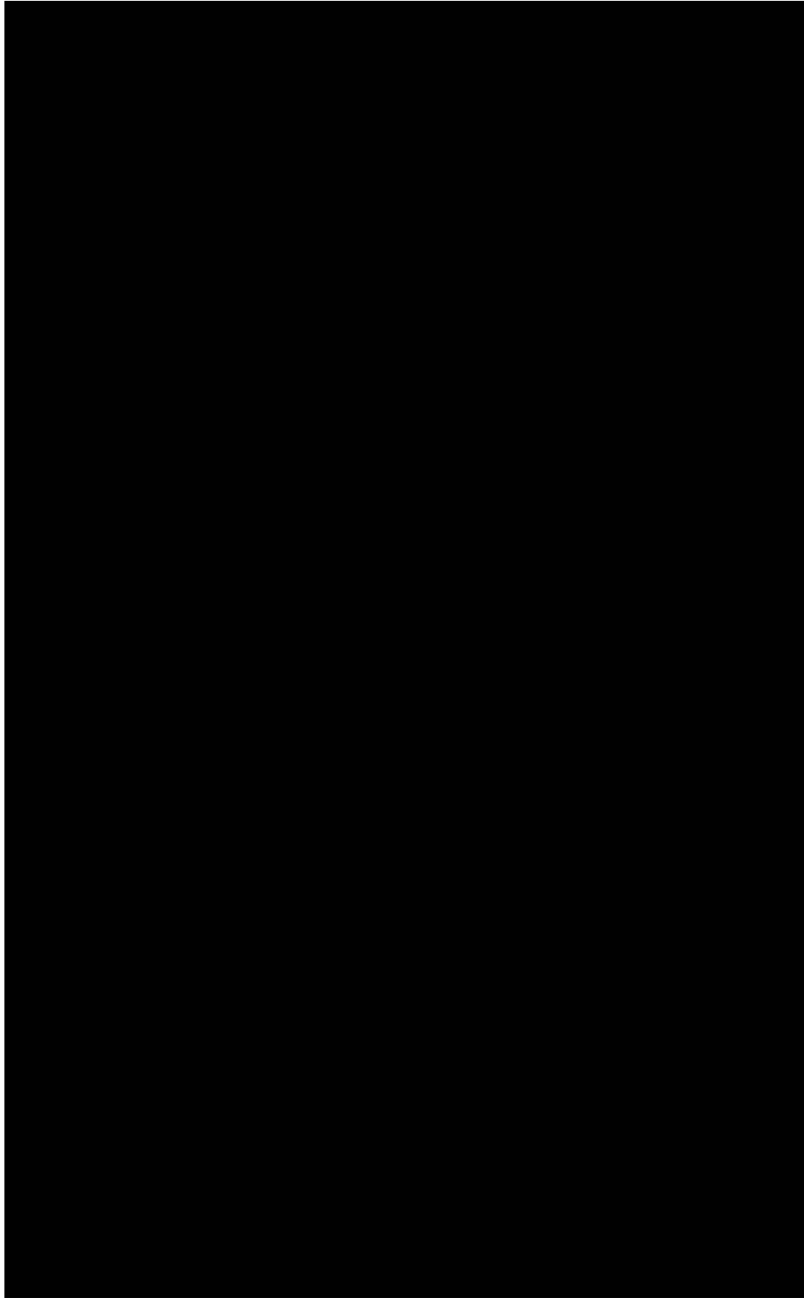
*Signature Page to
Agreement and Plan of Merger and Sale and Purchase of Equity Interests*



*Signature Page to
Agreement and Plan of Merger and Sale and Purchase of Equity Interests*

Execution Version

PURCHASER PARTIES



*Signature Page to
Agreement and Plan of Merger and Sale and Purchase of Equity Interests*

Exhibit A-1
NERC Plan of Merger

EXHIBIT A-1

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Exhibit A-2
NWRC Plan of Merger

EXHIBIT A-2

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Exhibit B
Escrow Agreement

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by Stockholder Representative to Parent pursuant to and in accordance with **Section 2.16(d)** of the

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Schedule B



Exhibit C-1



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11

A black and white photograph of a person's face, heavily obscured by thick black horizontal bars. The bars cover the eyes, nose, and mouth, leaving only the forehead and chin visible. The person appears to be looking directly at the camera. The background is dark and indistinct.

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Exhibit C-2



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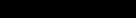
A black and white photograph of a person's face, heavily obscured by thick, horizontal black bars. The bars are positioned across the eyes, nose, and mouth, leaving only the forehead and chin visible. The person's expression is not discernible due to the obstruction. The background is dark and indistinct.

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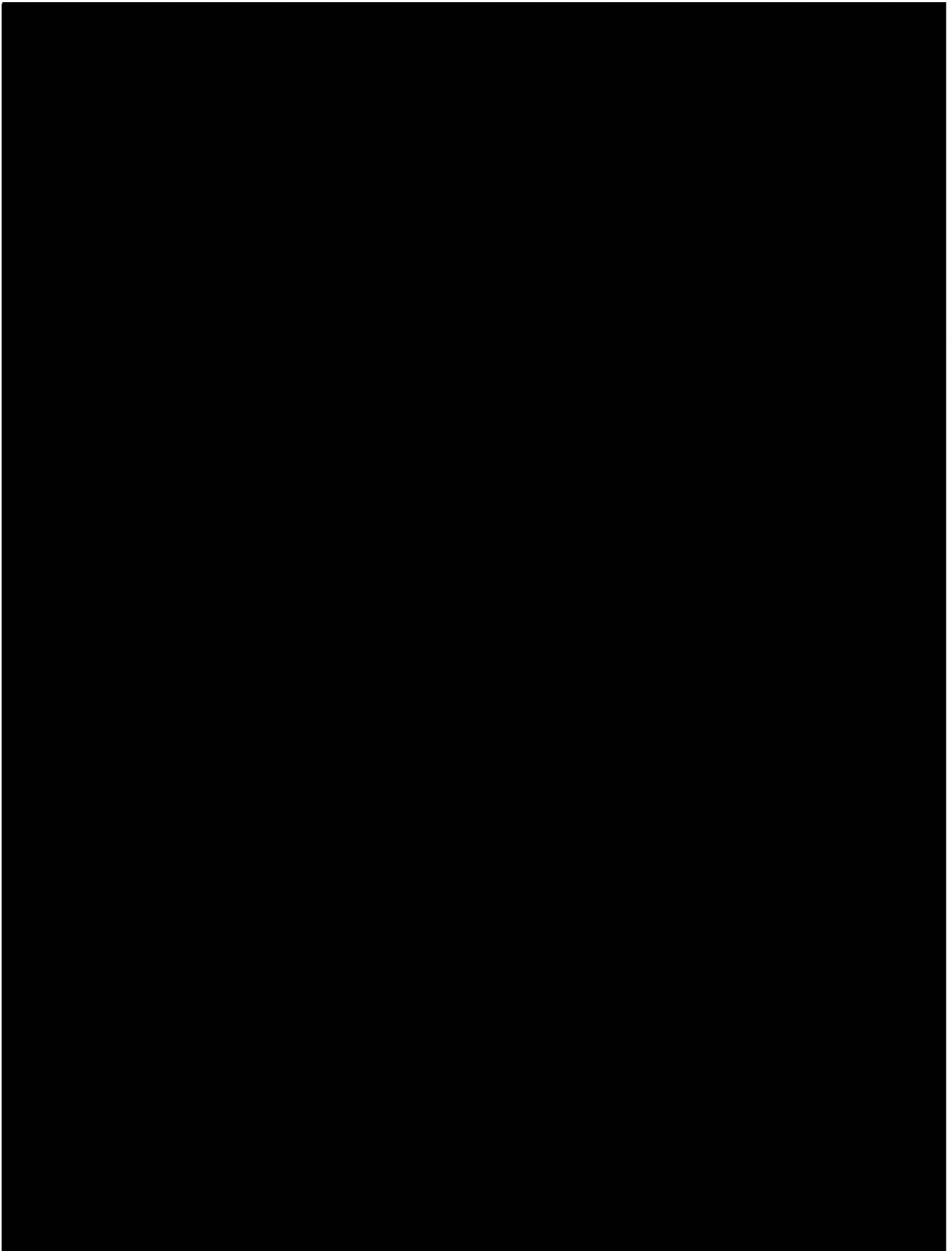


EXHIBIT A

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EXHIBIT B-1

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EXHIBIT B-2

Assignment and Assumption of Membership Interest

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[REDACTED]

[REDACTED]

Exhibit E-1



EXHIBIT E-1

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Exhibit E-2



EXHIBIT E-2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit F-1



CHARTER
OF
RJCMS, INC.

Pursuant to the Tennessee Business Corporation Act, T.C.A. § 48-11-101 *et seq.* ("Act"), the undersigned incorporator, desiring to form a corporation, hereby states the following:

1. **NAME.** The name of the corporation is RJCMS, Inc.
2. **SHARES.** The total number of shares which the corporation is authorized to issue is One Thousand (1,000) shares of Common Stock having no par value. The Common Stock has unlimited voting rights and is entitled to receive the net assets of the corporation upon dissolution.
3. **OFFICERS.** Pursuant to § 48-18-101 of the Act, the corporation, having no more than fifty (50) shareholders, shall dispense with a board of directors and all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, one or more of its officers, as set forth in the corporation's Bylaws. The name and address of the person to serve as the corporation's initial President and sole officer in the capacity of a director are as follows:

Brian Miller
101 R. J. Corman Drive
Nicholasville, Kentucky 40356

4. **REGISTERED OFFICE; REGISTERED AGENT.** The name of the initial registered agent of the corporation is Registered Agent Solutions, Inc. The address of the corporation's registered office is 992 Davidson Drive, Suite B, Nashville, Tennessee 37205 in the County of Davidson.
5. **PRINCIPAL OFFICE.** The street address of the corporation's principal office is 101 R. J. Corman Drive, Nicholasville, Kentucky 40356. The mailing address of the corporation's principal office is 101 R. J. Corman Drive, P.O. Box 788, Nicholasville, Kentucky 40356.
6. **INCORPORATOR.** The name of the corporation's incorporator is Ross D. Cohen, whose address is 3500 PNC Tower, 101 South Fifth Street, Louisville, Kentucky 40202
7. **INDEMNIFICATION OF OFFICERS.** The corporation, to the fullest extent allowed under the laws of the State of Tennessee (both now in effect and as hereafter may be adopted and amended), shall indemnify and hold harmless each present and future officer (and his or her estate, heirs, and personal representatives) from and against, and advance expenses to such person with respect to, any and all claims and liabilities (including expenses) arising out of service as an officer or otherwise at the request of the corporation. Such indemnification and advancement of expenses so provided shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaws, agreements or resolutions duly adopted. Notwithstanding the foregoing, no

indemnification or advancement of expenses may be made to or on behalf of any officer if a judgment or other final adjudication adverse to the officer establishes the officer's liability: (i) for any breach of the duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) under § 48-18-302 of the Act regarding unlawful distributions.

- 8. ELIMINATION OF CERTAIN LIABILITY OF OFFICERS.** To the fullest extent allowed by the laws of the State of Tennessee (both now in effect and as hereafter may be adopted and amended), no present or future officer of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as an officer of the corporation. The foregoing shall not eliminate or limit the liability of an officer: (i) for any breach of the officer's duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) under § 48-18-302 of the Act regarding unlawful distributions.

- 9. FOR PROFIT.** The corporation is for profit.

- 10. SEVERABILITY OF PROVISIONS.** If any provision of this Charter, or its application to any person or circumstances, is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Charter that can be given effect without the invalid provision or application, and to this end the provisions of this Charter are severable.

IN WITNESS WHEREOF, the undersigned, being the incorporator of the corporation, has duly executed this Charter this 29th day of October, 2018.



ROSS D. COHEN, Incorporator

Exhibit F-2
NWRC Merger Sub Charter

CHARTER
OF
RJCWMS, INC.

Pursuant to the Tennessee Business Corporation Act, T.C.A. § 48-11-101 *et seq.* ("Act"), the undersigned incorporator, desiring to form a corporation, hereby states the following:

1. **NAME.** The name of the corporation is RJCWMS, Inc.
2. **SHARES.** The total number of shares which the corporation is authorized to issue is One Thousand (1,000) shares of Common Stock having no par value. The Common Stock has unlimited voting rights and is entitled to receive the net assets of the corporation upon dissolution.
3. **OFFICERS.** Pursuant to § 48-18-101 of the Act, the corporation, having no more than fifty (50) shareholders, shall dispense with a board of directors and all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, one or more of its officers, as set forth in the corporation's Bylaws. The name and address of the person to serve as the corporation's initial President and sole officer in the capacity of a director are as follows:

Brian Miller
101 R. J. Corman Drive
Nicholasville, Kentucky 40356

4. **REGISTERED OFFICE; REGISTERED AGENT.** The name of the initial registered agent of the corporation is Registered Agent Solutions, Inc. The address of the corporation's registered office is 992 Davidson Drive, Suite B, Nashville, Tennessee 37205 in the County of Davidson.
5. **PRINCIPAL OFFICE.** The street address of the corporation's principal office is 101 R. J. Corman Drive, Nicholasville, Kentucky 40356. The mailing address of the corporation's principal office is 101 R. J. Corman Drive, P.O. Box 788, Nicholasville, Kentucky 40356.
6. **INCORPORATOR.** The name of the corporation's incorporator is Ross D. Cohen, whose address is 3500 PNC Tower, 101 South Fifth Street, Louisville, Kentucky 40202.
7. **INDEMNIFICATION OF OFFICERS.** The corporation, to the fullest extent allowed under the laws of the State of Tennessee (both now in effect and as hereafter may be adopted and amended), shall indemnify and hold harmless each present and future officer (and his or her estate, heirs, and personal representatives) from and against, and advance expenses to such person with respect to, any and all claims and liabilities (including expenses) arising out of service as an officer or otherwise at the request of the corporation. Such indemnification and advancement of expenses so provided shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaws, agreements or resolutions duly adopted. Notwithstanding the foregoing, no

indemnification or advancement of expenses may be made to or on behalf of any officer if a judgment or other final adjudication adverse to the officer establishes the officer's liability: (i) for any breach of the duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) under § 48-18-302 of the Act regarding unlawful distributions.

- 8. ELIMINATION OF CERTAIN LIABILITY OF OFFICERS.** To the fullest extent allowed by the laws of the State of Tennessee (both now in effect and as hereafter may be adopted and amended), no present or future officer of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as an officer of the corporation. The foregoing shall not eliminate or limit the liability of an officer: (i) for any breach of the officer's duty of loyalty to the corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) under § 48-18-302 of the Act regarding unlawful distributions.

- 9. FOR PROFIT.** The corporation is for profit.

- 10. SEVERABILITY OF PROVISIONS.** If any provision of this Charter, or its application to any person or circumstances, is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Charter that can be given effect without the invalid provision or application, and to this end the provisions of this Charter are severable.

IN WITNESS WHEREOF, the undersigned, being the incorporator of the corporation, has duly executed this Charter this 29th day of October, 2018.



ROSS D. COHEN, Incorporator

Exhibit G
Equityholder schedule

Exhibit G
Equityholder Schedule

