

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**MOTION FOR AUTHORITY TO SELL SUBSTANTIALLY ALL OF THE DEBTOR'S
ASSETS AND TO ASSUME AND ASSIGN CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES**

Robert J. Keach, the chapter 11 trustee (the "Trustee") in the above-captioned chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), moves, pursuant to 11 U.S.C. §§ 105(a), 363 and 365, as supplemented by Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and D. Me. LBR 6004-1, for authority to sell substantially all of the Debtor's assets to Railroad Acquisition Holdings LLC (the "Stalking Horse"), as more particularly described in that certain Asset Purchase Agreement dated December 12, 2013 (the "APA"), a copy of which is attached hereto as **Exhibit A**. By this motion (the "Sale Motion"), the Trustee also seeks authority to assume and assign to the Stalking Horse, or to any successful bidder, certain executory contracts and unexpired leases. The proposed sale shall be free and clear of all liens, claims and encumbrances with all such liens, claims and encumbrances to attach to the proceeds of the proposed sale, except as provided herein. Finally, the Trustee seeks an order pursuant to Bankruptcy Rules 6004(h) and 6006(d) authorizing him to consummate the proposed sale immediately after entry of this Court's order granting this Sale Motion. In support hereof, the Trustee states as follows:

I. JURISDICTION, VENUE AND STATUTORY BASIS FOR RELIEF

1. The United States District Court for the District of Maine (the “District Court”) has original but not exclusive jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Sale Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case and this Sale Motion to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter final judgment in this proceeding.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Sale Motion is predicated upon 11 U.S.C. §§ 105(a), 363 and 365, Bankruptcy Rules 2002, 6004, 6006, and 9014, and D. Me. LBR 6004-1.

II. BACKGROUND

5. On August 7, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under 11 U.S.C. § 101 et seq. (the “Case”). The Debtor’s bankruptcy filing was precipitated by the train derailment in Lac-Mégantic, Québec on July 6, 2013 (the “Derailment”). The Derailment set off explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. The Derailment also precipitated the filing by Montreal Maine & Atlantic Canada Co. (“MMA Canada” and, together with MMA, the “Debtors”), MMA’s subsidiary, under Canada’s *Companies’ Creditors Arrangement Act* (the “Canadian Case”) in Superior Court in Canada (the “Canadian Court”).

6. On September 4, 2013, the Court entered an order adopting the *Cross-Border Insolvency Protocol* (the “Protocol”) [Docket No. 168], which governs the conduct of all parties

in interest in the Case and the Canadian Case. The Canadian Court also adopted the Protocol. Pursuant to the Protocol, counsel to MMA Canada and the monitor appointed in the Canadian Case (the “Monitor”) will seek authority from the Canadian Court to sell those assets described in the APA that are owned by MMA Canada.

7. Contemporaneously with the filing of this Sale Motion, the Trustee has filed a *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor’s Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursement and Overbid Protections; and (E) Approving a Form of Notice of Sale* (the “Bid Procedures Motion”). The Trustee, by the Bid Procedures Motion, seeks approval of certain procedures by which the Assets may be sold.

A. Pre-Petition Secured Indebtedness

8. Prior to the Petition Date, MMA entered into certain secured financing transactions. Specifically, MMA is indebted to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration (the “FRA”), under a \$34,000,000 Loan and Security Agreement dated March 24, 2005, as such agreement may have been amended, modified, renewed or extended from time to time (the “FRA Credit Facility”). The FRA Credit Facility was issued pursuant to Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. § 821, et seq. The outstanding balance under the FRA Credit Facility is approximately \$27.5 million.

9. MMA’s obligations to FRA under the FRA Credit Facility are secured by the following:

- i. A first-priority mortgage on substantially all of MMA’s real property located in Maine and Vermont, including the U.S. rail corridor

consisting of approximately 220.73 miles of track located in Maine and an estimated 23.47 miles of track located in Vermont, as well as various land and buildings owned by MMA in fee simple;

- ii. A first-priority security interest in all rail lines and related tracks and improvements located within the United States, including all rail ties, bridges, and related assets;
- iii. All of MMA's real property located in Québec, Canada;
- iv. All of MMA's shares in MMA Canada;
- v. All of the real property owned by MMA Canada and located in Québec, Canada; and
- vi. All of MMA Canada's personal property.

All mortgages and security agreements securing the FRA Credit Facility were timely and properly perfected by recordings in the United States and Canada.

10. MMA also has a \$6 million line of credit with Wheeling & Lake Erie Railway Company ("Wheeling") pursuant to a certain Line of Credit and Security Agreement dated as of June 15, 2009, as such agreement may have been amended, modified, renewed or extended from time to time (the "Wheeling LOC"), which, as of the Petition Date, was fully drawn. To secure the Wheeling LOC, Wheeling asserts an interest in MMA's accounts receivable and inventory, along with the proceeds thereof. Wheeling has filed a UCC-1 financing statement in Delaware to perfect its security interest.

11. Additionally, the Maine Department of Transportation ("MDOT") has a security interest in all rail, related cross ties, and related track materials incorporated or installed in, attached to, or located on certain rail corridors owned by MMA and located in Maine, the purchase of which rail and related materials was funded by funds advanced under certain Rail Funding Agreements entered into with MMA.

12. Finally, Bangor Savings Bank asserts a security interest in certain of the rolling stock owned by MMA. The Debtor leases a substantial portion of its other locomotives, rail cars, hirail vehicles, and rolling stock from several different lessors.

B. Post-Petition Borrowing

13. Subsequent to the Petition Date, the Trustee filed a motion seeking authority to enter into a secured financing transaction with Camden National Bank ("Camden National"), pursuant to which Camden National would loan the Debtor \$3,000,000 (the "Camden Loan"). Pursuant to an Order entered by the Court on October 9, 2013, the Court authorized the Trustee to enter into the Camden Loan [Docket No. 367]. The Camden Loan is, with the consent of the FRA, secured by a first mortgage and security interest on all assets, located in the United States, that secure the FRA Credit Facility.

14. Additionally, pursuant to an Order entered by the Bankruptcy Court on October 18, 2013, the Bankruptcy Court approved a stipulated carve-out from FRA's secured claim (the "Carve-Out") to pay the allowed fees and expenses of the Trustee and professionals retained by the Trustee, in an amount not to exceed \$5 million. *See* Docket No. 392. The Carve-Out ensures that administration of MMA's case will be funded, in furtherance of the Trustee's fiduciary duty to creditors of MMA, pending sale of the Assets and confirmation of a plan.

C. Marketing Process

15. The Trustee, MMA Canada, and the Monitor, in consultation with FRA, have determined that a sale of the assets of both MMA and MMA Canada, on a going concern basis, is in the best interests of the creditors of both Debtors. In order to preserve the going concern value of the Debtors' assets, such sale must occur on an expedited basis.

16. Accordingly, shortly after being appointed, the Trustee sought Court approval to retain Gordian Group (“Gordian”) as investment banker. *See* Docket No. 342. With the assistance of Gordian, the Trustee entered into non-disclosure agreements with over twenty prospective purchasers, thereby providing such potential purchasers with access to an electronic data room and confidential and proprietary information regarding the Debtors and their assets. Additionally, a number of prospective purchasers made on-site visits to the Debtors’ property. The Trustee and Gordian, in coordination with MMA Canada and the Monitor, have actively and aggressively marketed the Debtors’ assets with the aim of maximizing the value of those assets for the benefit of all creditors.

17. As a consequence of the marketing efforts spearheaded by Gordian, the Trustee and MMA Canada entered into the APA with the Stalking Horse.

III. RELIEF REQUESTED

18. Pursuant to this Sale Motion, the Trustee requests entry of an order authorizing him to sell the Assets (as defined below) to the Stalking Horse (or other such entity, if any, that submits a higher and better offer for the Assets, hereinafter the “Successful Bidder”) free and clear of all liens, claims, encumbrances and interests. Additionally, the Trustee seeks authority to assume and assign certain executory contracts and unexpired leases (the “Assigned Contracts and Leases”) to the Stalking Horse or the Successful Bidder. In connection with the sale and assignment, the Trustee requests that this Court enter an order approving the proposed sale, which would (i) authorize and approve the proposed sale pursuant to the terms of the APA, and (ii) approve the assumption and assignment of the Assigned Contracts and Leases (or such other executory contracts and/or unexpired leases as the Stalking Horse or Successful Bidder may identify).

IV. **BASIS FOR RELIEF**

A. **Summary of Sale**

19. The APA contains the material terms of the Stalking Horse's proposed purchase and should be consulted as to all of the terms of the proposed sale. Certain material terms of the Stalking Horse APA can be summarized as follows:¹

- a. **Purchased Assets:** All assets of MMA and MMA Canada other than the Excluded Assets (collectively, the "Assets").
- b. **Assigned Contracts and Leases:** all executory contracts and all unexpired leases (the "Assigned Contracts and Leases"), subject to the addition or removal of certain executory contracts and unexpired leases by the Stalking Horse pursuant to the terms of the APA, shall be assigned to the Stalking Horse.
- c. **Excluded Assets:** includes: cash; cash equivalents; accounts; accounts receivable; rights of reimbursement; setoff rights; rights of recoupment and any rights arising out of governmental programs; causes of action other than the Assigned Causes of Action selected by the Stalking Horse pursuant to Section 2.1(a)(xv) and Section 2.1(b)(xv) of the APA; the Debtors' rights and interests under any insurance policies; any and all claims, causes of action, or liabilities relating to or arising out of the Derailment; deposits; contracts and leases not assigned to the Stalking Horse.
- d. **Sale Free and Clear:** The transfer of the Assets to the Stalking Horse shall be free and clear of all liens, claims, encumbrances and interests.
- e. **Purchase Price:** The purchase price for the Assets consists of: Fourteen Million, Two Hundred and Fifty Thousand Dollars (\$14,250,000.00) (the "Purchase Price").
- f. **Deposit:** The Stalking Horse will deliver to counsel to the Trustee, as escrow agent, a deposit of \$750,000 (the "Deposit") within five (5) Business Days following the execution of the APA. The Deposit (and any interest accrued thereon) shall be credited as a partial payment of the Purchase Price payable at the Closing.

¹ The summary of the terms of the APA set forth herein is intended solely to provide a brief overview of certain material terms thereof. This summary is qualified entirely by reference to the APA, and in the event of any conflict or inconsistency between the provisions of this Motion and the APA, the APA shall control.

- g. **Cure Costs:** The Stalking Horse shall pay any amounts payable under 11 U.S.C. § 365(b)(1)(A), (B), or (C) in order to effectuate the assumption of the Assigned Contracts and Leases, provided, however, that such cure costs shall not exceed the Cure Cost Cap set forth in the APA.
- h. **Closing Costs:** The Stalking Horse shall pay any recording fees and transfer taxes, except as otherwise provided in the Sale Order or Vesting Order. Other costs associated with the closing of the APA shall be allocated as provided elsewhere in the APA.
- i. **Break-Up Fee:** The APA requires that, in the event that a higher or better offer or offers is approved by the Bankruptcy Court and/or the Canadian Court, the Debtors pay to the Stalking Horse a break-up fee in the amount of \$498,750 (the “Break-Up Fee”) and a reimbursement of actual expenses incurred by the Stalking Horse (the “Expense Reimbursement”) in an amount not to exceed \$500,000.00. The Break-Up Fee and Expense Reimbursement shall constitute administrative expenses under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code.
- j. **Conditions to Closing:** includes: entry of orders by this Court and the Canadian Court approving Bid Procedures, Sale Motion, and assumption, assignment and cure procedures; and all required governmental approvals and permits.

B. Request for Authority to Sell Substantially All of MMA’s Assets

20. Section 363(b)(1) of the Bankruptcy Code provides authority for a trustee, “after notice and a hearing, [to] use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The authority to sell assets conferred upon a trustee by section 363(b) of the Bankruptcy Code includes a sale of substantially all the assets of an estate. *See In re Coastal Cable T.V., Inc.*, 24 B.R. 609, 611 (1st Cir. B.A.P. 1982) (vacated on other grounds) (“A sale of all or most of a debtor’s assets may occur prior to confirmation of a plan.”); *In re GSC, Inc.*, 453 B.R. 132, 155 (Bankr. S.D.N.Y. 2011) (“In addition to a reorganization plan, a section 363(b) sale is an appropriate means of disposing of the debtor’s assets. . . . ‘A debtor may sell substantially all of its assets as a going concern and later submit a

plan of liquidation”) (quoting In re Chrysler, LLC, 405 B.R. 84, 96 (Bankr. S.D.N.Y. 2009)); In re CadKey, Inc., 317 B.R. 19, 24 (D. Mass. 2004) (affirming order authorizing sale of substantially all of debtor’s assets); Otto Premaer Films, Ltd. v. Qintex Entm’t., Inc. (In re Qintex Entm’t Inc.), 950 F.2d 1492, 1495 (9th Cir. 1991) (“Section 363 of the Code allows a debtor to sell assets of the estate . . . including a sale of substantially all the assets of the estate.”); In re Haven Eldercare, LLC, 390 B.R. 762, 770 (Bankr. D. Conn. 2008) (same; collecting cases); *see also Fla. Dep’t. Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 37 n.2 (2008) (“[I]n some cases . . . a debtor sells all or substantially all its assets under § 363(b)(1) . . . before seeking or receiving plan confirmation.”); In re Envisionet Computer Svcs., Inc., 275 B.R. 664, 666, (D. Me. 2002) (noting that bankruptcy court entered an order approving the sale of substantially all of the debtor’s assets).

21. The power to approve a sale under section 363(b) is “within the sound discretion of the trial court.” Coastal Cable T.V., 24 B.R. at 611. “[A] chapter 11 debtor may sell all or substantially all its assets pursuant to section 363(b) prior to confirmation of a chapter 11 plan, when the court finds a good business reason for doing so.” In re General Motors Corp., 407 B.R. 463, 491 (Bankr. S.D.N.Y. 2009); *see also In re AMR Corp.*, 490 B.R. 158, 164 (Bankr. S.D.N.Y. 2013); Lionel Corp. v. Comm. of Equity Security Holders (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (rejecting the requirement that only an emergency situation permits the use of section 363(b) and setting forth the “sound business purpose” test in the context of a sale of substantially all of a debtor’s assets under section 363(b)); ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC), 650 F.3d 593, 601 (5th Cir. 2011); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986).

22. Assuming that the standard for approval of a sale of substantially all of a debtor's assets applies to the proposed sale of the Assets, the "sound business purpose" test is easily met. MMA has obtained financing sufficient to maintain its operations only through the next few months. A sale of the Assets as a going concern will maximize the value of the estate for the benefit of all stakeholders. In contrast, the delay attendant in confirming and selling under a plan would almost certainly result in a material loss of value.

23. Courts have also required that the sale price be fair and reasonable and that the sale be the result of good faith negotiations with the Stalking Horse. *See, e.g., In re Abbotts Dairies of Pa.*, 788 F.2d 143, 147-50 (3d Cir. 1986); *see also* 11 U.S.C. § 363(m) ("The reversal or modification on appeal of an authorization under [§ 363(b)] of a sale or lease of property does not affect the validity of a sale or lease . . . to an entity that purchased or leased such property in good faith . . .").

24. As noted above, the Trustee, with the assistance of Gordian, extensively marketed the Assets to numerous potential purchasers and entered into non-disclosure agreements with many potential purchasers to enable such entities to conduct due diligence with respect to the Assets. The Trustee was unable to secure an offer at this time for the Assets that provided more consideration to MMA's estate than the offer made by the Stalking Horse, although such a higher and better offer may occur in connection with the auction.

25. The APA is the product of good faith and arm's length negotiations between the Trustee and the Stalking Horse. Further, the price and the form and structure of the offer proposed by the Stalking Horse will continue to be tested in the marketplace. The bidding procedures, which the Trustee has requested this Court approve pursuant to the Bid Procedures Motion, are fair to all parties and are designed to permit the Trustee to obtain the best possible

price for the Assets. Thus, the Trustee believes that the winning bid or bids that emerge from this process will be the highest and best bid(s) obtainable for the Assets.

26. The Trustee submits that the proposed sale of the Assets to the Stalking Horse is entirely consistent with the guidelines set forth in applicable case law. The Trustee believes that a prompt sale is in the best interests of the Debtors' creditors and their respective estates, and will maximize the amount that the Debtors, their creditors, and their estates may realize from the sale of the Assets.

C. Sale Free and Clear of Liens, Claims and Interests

27. The Trustee requests authorization to sell the Assets free and clear of liens, claims, encumbrances, and other interests subject to the provisions contained herein. Section 363(f) of the Bankruptcy Code provides that:

The trustee may sell property under [§ 363(b)] free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). “Because the language of § 363(f) is in the disjunctive, courts can approve a sale if any one of the five conditions is satisfied.” BAC Home Loans Servicing LP v. Grassi, 2011 WL 6096509 at *5 (1st Cir. BAP Nov. 21, 2011).

28. The Trustee expects that he will satisfy, at a minimum, the second and fifth of the requirements under section 363(f). Without limitation, the Trustee anticipates that he will obtain the consent of those entities holding an interest in the Assets.

29. Alternatively, if any of the secured creditors asserting an interest in the Assets are not willing to consent to the sale of the Assets, the Court is nonetheless empowered to authorize the sale free and clear of any such interest as long as that creditor receives the value of its collateral. *See In re Boston Generating, LLC*, 440 B.R. 302, 332 (Bankr. S.D.N.Y. 2010); *In re Beker Indus. Corp.*, 63 B.R. 474, 477 (Bankr. S.D.N.Y. 1986); *In re Oneida Lake Dev., Inc.*, 114 B.R. 352, 356-57 (Bankr. N.D.N.Y. 1990). Those secured creditors could be compelled to accept a money satisfaction of their respective interests pursuant to section 363(f)(5) of the Bankruptcy Code. *See, e.g., In re James*, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997); *In re Grand Slam U.S.A., Inc.*, 178 B.R. 460, 461-62 (E.D. Mich. 1995). Courts considering this issues have held that the “cramdown” provision under the Bankruptcy Code constitutes a “legal or equitable proceeding” and permits a sale under section 363(f)(5). *See, e.g., Grand Slam*, 178 B.R. at 464; *In re Levitt & Sons, LLC*, 384 B.R. 630, 648 (Bankr. S.D. Fla. 2008); *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 508 (Bankr. N.D. Ala. 2002); *Scherer v. Fed. Nat. Mortg. Ass’n (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 829 (N.D. Ill. 1993).

30. All liens against the Assets will attach to the cash proceeds received from the sale of those Assets in the same force, effect and priority as such liens have existed prior to the Petition Date, subject to the rights and defenses, if any, of the Trustee and/or the Debtor or any party in interest.

D. Assumption and Assignment of Executory Contracts and Unexpired Leases

31. A trustee is authorized to assume an executory contract and unexpired lease provided that, at the time of assumption, the trustee: (1) cures, or provides adequate assurance that the trustee will promptly cure, any default; (2) compensates, or provides adequate assurance that the trustee will promptly compensate, the counterparty for any actual pecuniary loss

resulting from any default; and (3) provides adequate assurance of future performance under the executory contract or unexpired lease. *See* 11 U.S.C. § 365(a), (b)(1). A default based upon the filing of the bankruptcy case or the insolvency or financial condition of the debtor need not be cured. *See* 11 U.S.C. § 365(b)(2).

32. In the case of an assumption and assignment, the purchaser or assignee provides the adequate assurance of future performance. *See* 11 U.S.C. § 365(f)(2). The Bankruptcy Code does not define the term “adequate assurance,” and courts have found that “the term ‘adequate assurance’ was intended to be given a practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009). Adequate assurance is “something less than an absolute guarantee.” *Id.*

33. In this case, the APA, as well as the Bid Procedures Motion, contemplates that certain unexpired leases and executory contracts will be assumed and assigned to the Stalking Horse or the Successful Bidder. The Trustee, pursuant to this Motion, seeks to assume and assign those executory contracts and unexpired leases designated by the Stalking Horse or Successful Bidder to be assumed.

34. To accomplish this goal in the most fair and expeditious manner, as provided in the Bid Procedures Motion, the Trustee shall provide the counterparties to such agreements with notice and a reasonable opportunity to object to the proposed assumption and assignment of the agreement, to state cure amounts, if any, that they believe are owing, and for a process to resolve any disputes with respect to such cure amounts.²

² Please see the Bid Procedures Motion and the Assumption and Assignment Procedures attached thereto for a more fulsome description of the procedures by which the Trustee will provide counterparties with notice and an opportunity to object to the proposed assumption and assignment of the Assigned Contracts and Leases and related cure amounts.

35. The Trustee requests that this Court establish a deadline for parties to the Assigned Contracts and Leases to file alleged cure amounts, or to object to the Trustee's proposed assumption and assignment of such agreements, as set forth in the Bid Procedures Motion. To the extent that issues exist as to cure amounts and/or any counterparties raise an issue with respect to the adequate assurance requirement, the Trustee requests that the Court address the matter at the hearing on this Sale Motion.

36. Finally, the Trustee requests that he and the Debtor be relieved from any further liability with respect to the Assigned Contracts and Leases after assumption and assignment to the Stalking Horse or the Successful Bidder. *See* 11 U.S.C. § 365(k).

V. NOTICE

37. The Trustee shall provide notice as follows: (a) the Sale Notice (as defined in the Bid Procedures Motion) on all creditors, including all plaintiffs and counsel in any and all lawsuits and other actions arising out of or related to the Derailment and (b) the Sale Notice and the Sale Motion (or the similar pleading and notice in the Canadian Case) on:

- a. The United States Trustee;
- b. The twenty largest non-insider unsecured creditors of the Debtor;
- c. Local, state and federal taxing authorities for each jurisdiction in which the Assets are located;
- d. Counsel to the Official Committee of Derailment Victims;
- e. Counsel to the Stalking Horse;
- f. Counsel to MMA Canada;
- g. the Monitor;
- h. Counsel to the Monitor;

- i. Prospective bidders (or their counsel) that are known to the Trustee and his advisors;
- j. The Counter-Parties to the executory contracts and unexpired leases on the Contract & Cure Schedule;
- k. Counsel to the Maine Department of Transportation;
- l. Counsel to the Federal Railroad Administration;
- m. The United States Environmental Protection Agency;
- n. Town of Lac Megantic;
- o. Ministry of Sustainable Development, Environment, Wildlife and Parks;
- p. Transport Canada;
- q. All parties known to the Trustee to have or assert any liens, claims and encumbrances or other interests against the Assets; and
- r. All parties having filed requests for notices in the Debtor's case.

38. The Trustee will also publish the Publication Notice (as defined in the Bid Procedures Motion) in (a) the national edition of *The Wall Street Journal*, (b) the *Journal of Commerce*, (c) the *Portland Press Herald*, (d) the *Globe & Mail*, and (e) the *Montreal Gazette* on or before five (5) days prior to the Sale Hearing.

CONCLUSION

Based upon the foregoing, the Trustee requests that the Court enter the proposed sale order authorizing the sale of the Assets to the Stalking Horse, subject to higher and better offers in accordance with the provisions of the bid procedures approved by this Court. In addition, the

Trustee requests that this Court enter an order waiving the provisions of Bankruptcy Rules 6004(h) and 6006(d).

Dated: December 12, 2013

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Michael Fagone

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") dated as of December 12, 2013, between ROBERT J. KEACH, AS CHAPTER 11 TRUSTEE (the "Trustee") FOR THE ESTATE OF MONTREAL MAINE & ATLANTIC RAILWAY, LTD., a Delaware Corporation ("MMA"), MONTREAL MAINE & ATLANTIC CANADA CO., a Nova Scotia unlimited liability company ("MMA Canada") (MMA and MMA Canada being referred to herein as "Sellers" and each individually as a "Seller") and Railroad Acquisition Holdings LLC (the "Purchaser").

RECITALS

A. WHEREAS, MMA and MMA Canada own fee and leasehold interests in, or otherwise own, certain railroad and related assets located in Maine, Vermont, Québec and New Brunswick, including the MMA Lines, the MMA Canada Lines, and certain warehousing and transloading assets in Maine and Québec; and

B. WHEREAS, on or about August 7, 2013, MMA filed a voluntary petition for relief commencing a case (the "MMA Chapter 11 Case") under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), filed as Case No. 13-10670 in the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court"); and

C. WHEREAS, on or about August 7, 2013, MMA Canada filed a proceeding (the "Canadian Proceeding") before the Superior Court for the Province of Québec, District of Montreal (the "Canadian Court") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"); the Initial Order in the Canadian Proceeding was entered on August 8, 2013 by the Canadian Court (and supervision of the Canadian Proceeding was subsequently transferred to the Superior Court for the Province of Québec, District of St-François); and

D. WHEREAS, the MMA Chapter 11 Case and the Canadian Proceeding are subject to the Cross-Border Insolvency Protocol approved and adopted by the Bankruptcy Court and the Canadian Court on September 4, 2013; and

E. WHEREAS, Sellers desire to sell to the Purchaser, and the Purchaser desires to purchase from the Sellers, certain assets located in the United States and Canada, tangible and intangible, associated with the business of Sellers as described hereinafter and in the Schedules to this Agreement, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363, 365, and 1161-1174 of the Bankruptcy Code and applicable or analogous provisions of the CCAA, including sections 11.3, 32 and 36 of the CCAA.

NOW THEREFORE, in consideration of the mutual benefits to be derived from this Agreement and of the representations, warranties, conditions, agreements and promises contained herein and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

“Agreement” shall mean this Asset Purchase Agreement, including the Exhibits and Schedules attached hereto.

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

“Assigned Causes of Action” shall mean the rights, demands, Claims, and causes of action arising in the ordinary course of Sellers’ business and pending as of the Closing Date that have been selected by Purchaser and which are listed on Schedule 2.1(a)(xv) and Schedule 2.1(b)(xv) hereto.

“Assigned Contracts” shall have the meaning set forth in Section 2.3(a)(i).

“Assigned Leases” shall have the meaning set forth in Section 2.3(a)(i).

“Assumed Liabilities” shall have the meaning set forth in Section 2.3(a).

“Bankruptcy Code” shall have the meaning set forth in Recital B, above.

“Bankruptcy Court” shall have the meaning set forth in Recital B, above.

“Bid Procedures” shall have the meaning set forth in Section 6.1(a).

“Bid Procedures Motions” shall have the meaning set forth in Section 6.1(a).

“Bid Procedures Orders” shall have the meaning set forth in Section 6.1(a).

“Break-Up Fee” shall have the meaning set forth in Section 5.4.

“Business Day” means any day of the year, other than any Saturday, Sunday or any day on which banks located in New York, New York or the Province of Québec generally are closed for business.

“CCAA” shall have the meaning set forth in Recital C, above.

“Canadian Court” shall have the meaning set forth in Recital C, above.

“Canadian Proceeding” shall have the meaning set forth in Recital C, above.

“Claims” shall have the meaning set forth in the Bankruptcy Code and jurisprudence interpreting the Bankruptcy Code and in the CCAA and the jurisprudence interpreting the CCAA, as applicable, and shall include, among other things, any and all claims or orders arising under Environmental Laws and any and all claims or rights based on successor, tort and products liability.

“Closing” shall have the meaning set forth in Section 2.6.

“Closing Date” shall have the meaning set forth in Section 2.6.

“Contracts” shall have the meaning set forth in Section 3.8.

“Deposit” shall have the meaning set forth in Section 2.4(a).

“Derailment” shall mean the derailment of an unmanned train on July 6, 2013 at the Rue Frontenac road crossing in Lac-Mégantic, Québec.

“Environmental Laws” shall mean all applicable laws relating to pollution or protection of human health or the environment (including without limitation ambient air, water, surface water, groundwater, land surface, soil or subsurface) or natural resources (including without limitation applicable laws relating to the storage, transfer, transportation, investigation, cleanup, treatment, or use of, or release or threatened release into the environment of, any Hazardous Substances).

“Environmental Liabilities” shall mean and include any claims, judgments, order, damages (including punitive damages), losses, penalties, fines, liabilities, encumbrances, violations, responsibilities, costs and expenses (including attorneys fees) of investigation, remediation, cleanup, corrective action, monitoring, or defense of any matter arising (whether at law or in equity) under any Environmental Laws or in any way relating to (i) the environment (including any surface or subsurface physical medium or natural resource such as air, land, soil, surface waters, ground waters, stream and river and biota), (ii) the use, generation, storage, treatment, disposal, processing, transportation, handling, release, emission or remediation of Hazardous Substances, or (iii) impacts on human health and safety resulting from the foregoing, of whatever kind or nature, by any party, Government Authority or other entity, whether or not resulting from the violation of, or noncompliance with, Environmental Laws.

“ETA” means the *Excise Tax Act* (Canada).

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

“Expense Reimbursement” shall have the meaning set forth in Section 5.4.

“Filing Date” shall mean, as to MMA, August 7, 2013, the date on which MMA commenced the MMA Chapter 11 Case, and, as to MMA Canada, August 8, 2013, the day the Initial Order was entered in the Canadian Proceeding.

“Final Order” shall mean an order of the Bankruptcy Court and/or the Canadian Court that has not been vacated, stayed, amended, reversed or modified, and shall not be subject to timely judicial or administrative appeal or action.

“Governmental Authorities” shall mean and include any ministry, agency, board, bureau, executive, court, commission, department, tribunal, instrumentality or administration of the United States, Canada or any State or Province, and any local,

municipal or other governmental body in a State of the United States or Province of Canada.

“Governmental Permits” shall mean and include all licenses, permits, approvals, consents, certificates, waivers, exemptions, orders and other authorizations from any and all Governmental Authorities, including, without limitation, any certificates of fitness issued by any Governmental Authorities in connection with the transactions contemplated by this Agreement and the operation of the MMA Lines or the MMA Canada Lines.

“GST/HST” means any goods and services or harmonized sales tax imposed under Part IX of the ETA.

“Hazardous Substances” shall mean (1) any “hazardous substance,” as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) or a comparable Canadian, federal or provincial law or regulation, or other law or regulation, (2) any “hazardous waste,” as defined by the Resource Conservation and Recovery Act (“RCRA”) or a comparable Canadian or other law or regulation or (3) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance including asbestos, buried contaminants, regulated chemicals, flammable liquids or gasses, explosives, radioactive materials, polychlorinated biphenyls, petroleum and petroleum products, in each case the release of which into the environment or human exposure to which is regulated by any applicable Environmental Laws.

“Initial Minimum Overbid” shall have the meaning set forth in Section 6.1(a).

“Intellectual Property” shall mean all (i) trademarks, service marks, trade names, logos and corporate names and registrations and applications for registration and thereof, together with all of the goodwill associated therewith; (ii) registered copyrights; (iii) computer software (other than general commercial software), data, databases and documentation thereof; and (v) domain names and URLs used by Sellers in the course of their businesses.

“Leases” shall have the meaning set forth in Section 3.8.

“Liens” shall, with respect to the MMA Assets, have the meaning set forth in Section 101(37) of the Bankruptcy Code, subject, however, to applicable Canadian law with respect to the MMA Canada Assets.

“MMA” shall mean Montreal Maine & Atlantic Railway Ltd., a Delaware corporation and debtor in the MMA Chapter 11 Case.

“MMA Assets” shall have the meaning set forth in Section 2.1(a).

“MMA Assigned Contracts” shall have the meaning set forth in Section 2.1(a)(v).

“MMA Assigned Leases” shall have the meaning set forth in Section 2.1(a)(vi).

“MMA Canada” shall mean Montreal Maine & Atlantic Canada Co., a Canadian corporation subject to the Canadian Proceeding.

“MMA Canada Assets” shall have the meaning set forth in Section 2.1(b).

“MMA Canada Assigned Contracts” shall have the meaning set forth in Section 2.1(b)(v).

“MMA Canada Assigned Leases” shall have the meaning set forth in section 2.1(b)(vi).

“MMA Canada Lines” shall mean that certain rail line described on Exhibit B.

“MMA Chapter 11 Case” shall have the meaning set forth in Recital B, above.

“MMA Lines” shall mean that certain rail line described on Exhibit A.

“MMA Operating Agreements” shall have the meaning set forth in Section 2.1(a)(iv).

“Proceedings” shall have the meaning set forth in Section 2.3(b)(v).

“Purchaser” shall mean Railroad Acquisition Holdings LLC or its assignee(s).

“Purchase Price” shall have the meaning set forth in Section 2.5.

“QST” means any Québec sales tax imposed under the QST Act.

“QST Act” means Title I of *An Act respecting the Québec sales tax*.

“Real Property” shall have the meaning set forth in Section 3.5.

“Retained Liabilities” shall have the meaning set forth in Section 2.3(b).

“Sale Order” shall mean a Final Order issued by the Bankruptcy Court approving the sale of the Assets pursuant to this Agreement and under the applicable provisions of the Bankruptcy Code.

“Sellers” shall mean MMA and MMA Canada, with each being referred to individually as a “Seller.”

“Stalking Horse Charge” shall have the meaning set forth in Section 5.4.

“Tax Act” means the *Income Tax Act*, R.S.C. 1985, 5th Supplement and the regulations thereunder.

“Taxes” shall have the meaning set forth in Section 2.3(b)(iii).

“Vesting Order” shall mean a Final Order issued by the Canadian Court approving the sale of the Assets pursuant to this Agreement and under the applicable provisions of the CCAA.

ARTICLE II

PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale. Upon the terms and subject to the conditions set forth herein, and subject to the court and regulatory approvals specified in Section 8.2(h), on the Closing Date, each Seller shall sell and deliver to the Purchaser, and the Purchaser shall purchase from MMA and MMA Canada (as applicable), all of Sellers’ right, title and interest in and to the assets specified below (the “Assets”), in each case free and clear of any Liens, Claims, encumbrances or interests, except as specifically permitted herein, as approved for sale, transfer and assignment pursuant to the Sale Order and the Vesting Order.

(a) Sale of MMA Assets. Subject to approval by the Bankruptcy Court, and applicable Governmental Authorities, MMA shall sell and deliver to the Purchaser all of the following assets (except the Excluded Assets identified in Section 2.2) (collectively, the “MMA Assets”):

(i) The MMA Lines.

(ii) All real and personal property owned by MMA, including without limitation all roadbed, track, bridges and culverts, signals and communications facilities, dispatching systems and equipment, stations, depots, yards, shops, parking and storage facilities, buildings and structures, facilities and other fixtures, and every other type of property owned by MMA and used by MMA in connection with its railroad operations, in each case located on, along, over and under the MMA Lines.

(iii) All locomotives, rail cars, maintenance of way equipment, work equipment, hirail vehicles, other rolling stock and motor vehicles owned by MMA, in each case selected by Purchaser and as listed on Schedule 2.1(a)(iii).

(iv) All trackage rights agreements, running rights agreements, interchange agreements, car switching agreements, haulage agreements and other operating agreements to which MMA is a party (the “MMA Operating Agreements”), as listed on Schedule 2.1(a)(iv).

(v) All executory Contracts selected by Purchaser and listed on Schedule 2.1(a)(v) (the “MMA Assigned Contracts”). Purchaser may, by giving notice thereof to Sellers at least five (5) days before the Closing, (a) elect to add a Contract to the schedule of MMA Assigned Contracts (and such additions shall be considered MMA Assigned Contracts under this Agreement), and/or (b) request that one or more of

the Contracts listed on Schedule 2.1(a)(v) be removed (and such Contracts shall no longer be considered MMA Assigned Contracts).

(vi) All unexpired real and personal property Leases selected by Purchaser and listed on Schedule 2.1(a)(vi), and all interests of each Seller therein, including real estate fixtures, leaseholder improvements, security and other deposits, common-area-maintenance refunds, adjustments, and other amounts payable to such Seller under or in respect of such Leases (the “MMA Assigned Leases”). Purchaser may, by giving notice thereof to MMA at least five (5) days before the Closing, (a) elect to add a Lease to the list of MMA Assigned Leases (and such additions shall be considered MMA Assigned Leases under this Agreement), and/or (b) request that one or more of the Leases listed on Schedule 2.1(a)(vi) be removed (and such Leases shall no longer be considered MMA Assigned Leases).

(vii) All uninstalled rail, ties and other track material, stores of fuel, spare parts, inventory, desks, chairs and office equipment (including telephones, fax machines, photocopiers, computers and printers, computer software and any related hardware), supplies, machinery and tools (other than employee hand tools) owned by MMA and used in the operation of MMA’s business.

(viii) All security deposits, prepayments, and similar items paid by MMA in connection with the MMA Assets described in Schedule 2.1(a)(viii).

(ix) All warranty, indemnification and similar rights of MMA under any agreement relating to the MMA Assets, to the extent transferable.

(x) The name “Montreal, Maine & Atlantic Railway,” and any other names confusingly similar thereto, and all Intellectual Property of MMA.

(xi) All maps, plans, title deeds, track charts, documents, and other books and records of MMA relating to the ownership and operation of MMA’s railroad and railroad-related assets (to the extent not identified as Excluded Assets in Section 2.2).

(xii) All customer lists, trade secrets, and other proprietary and confidential information that relate to, or are material to, or are used and useful in connection with, the ownership and operation of the MMA Lines, including all relevant books and records.

(xiii) All Governmental Permits (to the extent transferable) and all other licenses or authorizations and related documents that relate

to, or are material to, or are used and useful in connection with, the ownership and operation of the MMA Lines.

(xiv) Without limiting the generality of the foregoing, the MMA Assets shall also include the following:

(1) All agreements that generate income streams from property rentals, pipe, wire and utility crossing licenses and easements, and all similar agreements and/or arrangements relating to the MMA Lines, and any renewals thereof, provided, however, that all amounts due and owing under such agreements as of the Closing Date shall be payable only to MMA and shall constitute Excluded Assets.

(2) All rights of MMA under that certain AT&T Fiber Optic License dated May 17, 1993, and any extension, renewal, or replacement thereof, provided, however, that all amounts due and owing under such agreement as of the Closing Date shall be payable only to MMA and shall constitute Excluded Assets.

(3) All rights of MMA under that certain Easement Purchase Agreement with New England Independent Transmission Company, LLC dated July 5, 2012, provided, however, that all amounts due and owing under such agreement as of the Closing Date shall be payable only to MMA and shall constitute Excluded Assets.

(xv) Assigned Causes of Action to which MMA is a party and that have been selected by Purchaser and are listed on Schedule 2.1(a)(xv); provided, however, that any right of MMA to receive money (or obligation of MMA to pay money) in connection with any Assigned Cause of Action shall not be assigned to Purchaser, and shall remain the sole right (or obligation, as applicable) of MMA to the extent that such right (or obligation) relates to or arises from any action, occurrence, circumstance or omission prior to the Closing Date.

(xvi) Any and all other property of MMA, whether tangible or intangible, real, personal or mixed.

(b) Sale of MMA Canada Assets. Subject to approval by the Canadian Court and applicable regulatory authorities, MMA Canada shall sell and deliver to the Purchaser all of the following assets (except the Excluded Assets identified in Section 2.2) (collectively, the "MMA Canada Assets"):

(i) The MMA Canada Lines.

(ii) All real, immovable, personal property and movable property owned by MMA Canada, including without limitation all

roadbed, track, bridges and culverts, signals and communications facilities, dispatching systems and equipment, stations, depots, yards, shops, parking and storage facilities, buildings and structures, facilities and other fixtures, and every other type of property owned by MMA Canada or used by MMA Canada in connection with its railroad operations, in each case located on, along, over and under the MMA Canada Lines.

(iii) All locomotives, rail cars, maintenance of way equipment, work equipment, hirail vehicles, other rolling stock and motor vehicles owned by MMA Canada, in each case selected by Purchaser and listed on Schedule 2.1(b)(iii).

(iv) All trackage rights agreements, running rights agreements, interchange agreements, car switching agreements, haulage agreements, siding agreements, yard agreements and all other operating agreements to which MMA Canada is a party (the “MMA Canada Operating Agreements”), as listed on Schedule 2.1(b)(iv).

(v) All executory Contracts selected by Purchaser and listed on Schedule 2.1(b)(v) (the “MMA Canada Assigned Contracts”). Purchaser may, by giving notice thereof to Sellers at least five (5) days before the Closing, (a) elect to add a Contract to the schedule of MMA Canada Assigned Contracts (and such additions shall be considered MMA Canada Assigned Contracts under this Agreement), and/or (b) request that one or more of the Contracts listed on Schedule 2.1(b)(v) be removed (and such Contracts shall no longer be considered MMA Canada Assigned Contracts).

(vi) All unexpired real, immovable, movable and personal property Leases selected by Purchaser and listed on Schedule 2.1(b)(vi) and all interests of each Seller therein, including real estate fixtures, leaseholder improvements, security and other deposits, common-area-maintenance refunds, adjustments, and other amounts payable to such Seller under or in respect of such Leases (the “MMA Canada Assigned Leases”). Purchaser may, by giving notice thereof to MMA Canada at least five (5) days before the Closing, (a) elect to add a Lease to the list of MMA Canada Assigned Leases (and such additions shall be considered MMA Canada Assigned Leases under this Agreement), and/or (b) request that one or more of the Leases listed on Schedule 2.1(b)(vi) be removed (and such Leases shall no longer be considered MMA Canada Assigned Leases).

(vii) All uninstalled rail, ties and other track material, stores of fuel, spare parts, inventory, desks, chairs and office equipment (including telephones, fax machines, photocopiers, computers and printers, computer software and any related hardware), supplies,

machinery and tools (other than employee hand tools) owned by MMA Canada and used in the operation of MMA Canada's business.

(viii) All security deposits, prepayments, and similar items paid by MMA Canada in connection with the MMA Canada Assets described in Schedule 2.1(b)(viii).

(ix) All warranty, indemnification and similar rights of MMA Canada under any agreement relating to the MMA Canada Assets, to the extent transferable.

(x) The name "Montreal, Maine & Atlantic Canada Company" and any other names confusingly similar thereto, and all Intellectual Property of MMA Canada.

(xi) All maps, plans, title deeds, track charts, documents and other books and records of MMA Canada relating to the ownership and operation of MMA Canada's railroad and railroad-related assets, to the extent not identified as Excluded Assets in Section 2.2.

(xii) All customer lists, trade secrets, and other proprietary and confidential information that relate to, or are material to, or are used and useful in connection with, the ownership and operation of the MMA Canada Lines, including all relevant books and records.

(xiii) All Governmental Permits (to the extent transferable) and all other licenses or authorizations and related documents that relate, or are material to, or are used and useful in connection with, the ownership and operation of the MMA Canada Lines.

(xiv) Without limiting the generality of the foregoing, the MMA Canada Assets shall also include the following:

(1) All agreements that generate income streams from property rentals, pipe, wire and utility crossing licenses and easements and all similar agreements or arrangements relating to the MMA Canada Lines, and any renewals thereof, provided, however, that all amounts due and owing under such agreements as of the Closing Date shall be payable only to MMA and shall constitute Excluded Assets.

(2) All rights of MMA Canada under that certain Easement Purchase Agreement with New England Independent Transmission Company, LLC dated July 5, 2012, provided, however, that all amounts due and owing under such agreement as of the Closing Date shall be payable only to MMA and shall constitute Excluded Assets.

(xv) Assigned Causes of Action to which MMA Canada is a party and that have been selected by Purchaser and are listed on Schedule 2.1(b)(xv); provided, however, that any right of MMA Canada to receive money (or obligation of MMA Canada to pay money) in connection with any Assigned Cause of Action shall not be assigned to Purchaser, and shall remain the sole right (or obligation, as applicable) of MMA Canada to the extent that such right (or obligation) relates to or arises from any action, occurrence, circumstance or omission prior to the Closing Date.

(xvi) Any and all other property of MMA Canada, whether tangible or intangible, real, personal or mixed.

2.2 Excluded Assets. Notwithstanding anything else to the contrary set forth in this Agreement, the Assets to be conveyed to Purchaser shall not include, and Purchaser shall not buy or have any liability or obligation with respect to, any of the following (collectively, the "Excluded Assets") whether owned by one or more of the Sellers:

(a) Cash, cash equivalents, accounts, accounts receivable, credits, rights of reimbursement, set off rights, and rights of recoupment, including, without limitation, any reimbursement rights or other rights arising out of governmental programs; any amounts due for the sale of tax credits; waybills; ISS settlements; and other work in progress.

(b) Any and all causes of action other than the Assigned Causes of Action selected by Purchaser pursuant to Section 2.1(a)(xv) and Section 2.1(b)(xv) hereof, including, without limitation, causes of action arising under chapter 5 of the Bankruptcy Code or similar avoidance actions arising under the CCAA.

(c) Except as set forth in Section 10.1(viii) solely with respect to damage or destruction of Assets occurring after the entry of the Sale Order and the Vesting Order, the Sellers' rights and interests under any insurance policies including, but not limited to, insurance policies purchased from XL Group, Indian Harbor Insurance Company, and Travelers Insurance Co., and any or all affiliates of such entities.

(d) Any and all claims or causes of action relating to or arising out of the Derailment.

(e) All except as otherwise provided in Section 2.3(a)(iv), (i) employment, consulting, advisory or service agreements, plans, commitments, arrangements or understandings, (ii) employee benefit, deferred compensation and/or severance agreements, plans, commitments, arrangements or understandings including, without limitation, all stock option, stock purchase, bonus, incentive and similar agreements, plans, commitments, arrangements or understandings; (iii) collective bargaining agreements, commitments,

arrangements or understandings with employees, and (iv) agreements, obligations and liabilities with respect to or relating to any “pension plan” or “welfare plan” (as such terms are defined in ERISA), in each case unless such agreement, plan, commitment, arrangement or understanding is assumed, in writing, by Purchaser on Schedule 2.2(e) to this Agreement.

(f) Deposits, including all utility deposits, unless the deposit relates specifically to an Asset sold to Purchaser.

(g) All Contracts and Leases not listed on Schedules 2.1(a)(v), 2.1(a)(vi), 2.1(b)(v) and 2.1(b)(vi) of this Agreement as of five (5) days before the Closing.

2.3 Assumption and Assignment of Liabilities.

(a) Assumed Liabilities. Purchaser shall assume from Sellers the liabilities described below (the “Assumed Liabilities”):

(i) Purchaser shall assume all obligations of MMA or MMA Canada (as applicable) arising, and relating to, the period on or after the Closing Date under the MMA Assigned Contracts and MMA Canada Assigned Contracts (collectively, the “Assigned Contracts”) and the MMA Assigned Leases and the MMA Canada Assigned Leases (collectively, the “Assigned Leases”).

(ii) Purchaser shall assume all obligations of Sellers arising on or after the Closing Date relating to the Real Property (as defined in Section 3.5), including without limitation obligations arising under leases, easements, crossing agreements, and the like; provided, however, that Purchaser shall not assume or otherwise be liable for any claims, causes of action, regulatory actions, enforcement proceedings or Liabilities relating to the Real Property prior to the Closing Date.

(iii) Any amounts payable pursuant to Sections 365(b)(1)(A), (B) or (C) of the Bankruptcy Code, or Section 11.3 of the CCAA, in order to effectuate, pursuant to the Bankruptcy Code and the CCAA, the assumption by Sellers and assignment to the Purchaser of the Assigned Contracts and the Assigned Leases in accordance with the Assumption, Assignment and Cure Protocol, provided, however, that such amounts shall not exceed One Million Three Hundred Thousand Dollars (\$1,300,000.00) in the aggregate (the “Cure Cost Cap), provided, further, that to the extent that such amounts in the aggregate exceed the Cure Cost Cap, the Purchaser’s only remedies shall be to (A) designate certain contracts or leases as no longer being Assigned Contracts or Assigned Leases; or (B) terminate this Agreement pursuant to Section 10.1(b)(viii).

(iv) Purchaser shall assume all obligations of MMA Canada with respect to periods from and after the Closing Date under Canadian

labor contracts, including, but not limited to, that certain Collective Agreement Between Montreal Maine & Atlantic Canada Co. and The United Steelworkers of America, Local 9438, and shall indemnify Sellers from and against any such assumed obligations; provided, however, that nothing in this Section 2.3(a)(iv) shall be deemed to affect or impair the rights of Sellers to amend any such labor contracts prior to the Closing Date in a manner that is otherwise consistent with the terms of this Agreement and applicable law.

(v) Purchaser shall assume and pay, on behalf of MMA Canada, on the Closing Date, in the amounts and to the payees specified to the Purchaser in writing by MMA Canada not later than two (2) Business Days prior to the Closing Date, (a) to each Canadian employee of MMA Canada, an amount equal to such employee's accrued unpaid wages, vacation, all other fringe benefits, and wage related amounts, if any (together with a payment to the relevant regulatory authorities of any unrelated withholding or similar amounts), provided, however, that amounts with respect to union employees shall be validated in writing by the relevant union and all other amounts shall be validated by MMA Canada, and (b) to any Canadian taxing authority or governmental agency for accrued and unpaid taxes of MMA Canada. Any amount so paid shall be credited toward, and the total of such amounts shall not exceed, the Purchase Price.

(b) No Other Liabilities Assumed. Except for the Assumed Liabilities, the Purchaser shall not assume any liability or obligation of any of MMA or MMA Canada, and each of MMA and MMA Canada shall remain fully liable and responsible for all liabilities and obligations that are not expressly assumed by Purchaser pursuant to Section 2.3(a) (collectively, the "Retained Liabilities"). Without limitation of the foregoing, Purchaser and Sellers agree for purposes of clarity that the following liabilities and obligations shall not be assumed by Purchaser:

(i) Except as otherwise set forth in Section 2.3(a)(iv), any obligation of MMA and/or MMA Canada (as applicable) to its employees for compensation (including salary, bonuses, vacation and sick leave), benefits (including insurance and pensions), or severance pay associated with their employment by Sellers or the termination of that employment, including without limitation any liabilities arising under (i) any employment, consulting, advisory or service agreement, plan, commitment, arrangement or understanding, (ii) any employee benefit, deferred compensation or severance agreement, plan, commitment, arrangement or understanding (including, without limitation, any stock option, stock purchase, bonus, incentive and similar agreement, plan, commitment, arrangement or understanding); (iii) except as otherwise provided in Section 2.3(a)(iv), any collective bargaining agreement, commitment, arrangement or understanding with employees of MMA or

MMA Canada (as applicable); (iv) any “pension plan” or “welfare plan” (as such terms are defined in ERISA); and (v) COBRA, the WARN Act or any other applicable law or regulation of the United States or Canada or any state, province or subdivision thereof.

(ii) Indebtedness for borrowed money or accounts payable of MMA and MMA Canada.

(iii) (A) All federal, state, local, foreign and other taxes, levies, fees, imposts, duties, governmental fees and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto), whether or not imposed on a Seller, including, without limitation, taxes imposed on, or measured by, income, franchise, profits, gross income or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, stock transfer, license, payroll, withholding, employment, social security, workers’ compensation, unemployment compensation, utilities, severance, production, excise, stamp, occupation, premium, windfall profits, environmental, transfer and gains taxes and customs duties (“Taxes”), and including, without limitation, Taxes attributable to any Seller being a member of an affiliated group or other group filing on a combined or unitary basis and any liability arising from a Seller being a party to a Tax sharing or indemnity agreement relating to the Assets, including the sale thereof, in each case for all periods ending on or before the Closing Date, including the Pre-Closing portion of any tax period beginning before but ending after the Closing Date (provided, however, that Purchser shall remain responsible for paying all transfer taxes relating to the transfer of the Assets, except as otherwise provided in the Sale Order and the Vesting Order) and (B) any and all liabilities and obligations of each Seller or any affiliate thereof for Taxes (including, without limitation, Taxes attributable to any Seller being a member of an affiliated group or other group filing on a combined or unitary basis and any liability arising from a Seller being a party to a Tax sharing or indemnity agreement).

(iv) Sellers’ professionals’ fees and expenses for its advisors, including, without limitation, advisors retained pursuant to an order of the Bankruptcy Court or the Canadian Court.

(v) The costs incurred and expenses paid or payable by any Seller or any of its affiliates in connection with the administration of the Chapter 11 Case or Canadian Proceeding, or any other bankruptcy, regulatory, court or similar proceeding involving any Seller or any of its affiliates (including without limitation litigation or regulatory proceedings arising from or relating to the Derailment) (collectively, the “Proceedings”) including (a) obligations to pay professionals’ fees and expenses in connection with the Proceedings (including fees of attorneys,

accountants, investment bankers, financial advisors, and consultants retained by the Sellers or any of their affiliates, any official or unofficial committee or any pre-petition lenders, and any compensation for making a substantial contribution to the Proceedings), and reimbursement of any expenses incurred by the Sellers or their affiliates prior to the Closing Date in connection therewith (including any obligations to pay any holdback of any such fees and expenses), (b) fees and expenses payable to the United States Trustee under 28 U.S.C. § 1930, and (c) expenses of members of any official or unofficial committee.

(vi) Except as otherwise expressly provided herein, any obligations arising from or related to actions, circumstances, occurrences or omissions prior to the Closing Date under any assumed, rejected or other contract, lease or agreement.

(vii) Any and all liabilities of the Sellers or their affiliates to any creditors, interest holders or other parties in interest in the Proceedings.

(viii) Any and all liabilities of the Sellers or their affiliates arising from or related to the Derailment.

(ix) Any and all Environmental Liabilities, except to the extent that such liabilities relate to or arise from any action or omission of the Purchaser from and after the Closing Date; provided, however, that the Purchaser shall not assume any Environmental Liabilities relating to the Derailment, whether or not such liabilities arise from ongoing contamination from the Derailment after the Closing Date.

2.4 Deposit.

(a) Within five (5) Business Days following the full execution and delivery of this Agreement, Purchaser shall deliver to Bernstein, Shur, Sawyer & Nelson, P.A., as escrow agent, the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the "Deposit"). The Deposit (and any interest accrued thereon) shall be credited as a partial payment of the Purchase Price payable at the Closing. The Deposit shall, at all times prior to its release or return in accordance with the terms of this Agreement, be held by Bernstein, Shur, Sawyer & Nelson, P.A. in escrow in a segregated interest bearing account and in accordance with the terms of this Agreement, and, except for interest collected on the Deposit, no other money or funds shall be commingled in such account.

(b) In the event that (i) the parties terminate this Agreement pursuant to Section 10.1(a), (ii) Purchaser terminates this Agreement pursuant to Section 10.1(b), or (iii) Sellers terminate this Agreement pursuant to Section 10.1(c)(i) or 10.1(c)(iii), then the Deposit (and any interest accrued thereon) shall be returned immediately and in full to Purchaser. If this Agreement is terminated by Sellers

pursuant to Section 10.1(c)(ii), then the Deposit (and any interest accrued thereon) shall be delivered to Sellers. Delivery of the Deposit to Sellers in accordance with the foregoing shall not constitute full compensation of any and all losses and expenses incurred by Sellers, shall not constitute liquidated damages, and Sellers reserve the right to pursue any and all other remedies available at law or equity.

2.5 Purchase Price. The purchase price for the Assets (the “Purchase Price”) shall consist of Fourteen Million Two Hundred Fifty Thousand Dollars (\$14,250,000.00) plus the Assumed Liabilities, provided, however, that amounts paid pursuant to Section 2.3(a)(v) of this Agreement, if any, shall be deducted from the Purchase Price. Except as otherwise specified herein, the term “Dollars” or “\$” as used in this Agreement refers to United States Dollars.

2.6 Closing. The closing (the “Closing”) shall occur no later than thirty (30) days following the later to occur of (a) the date upon which the Sale Order and the Vesting Order approving the sale of the Assets to Purchaser in accordance with this Agreement shall have become Final Orders, and (b) the receipt of any necessary Governmental Permits necessary to authorize the transactions contemplated by the Agreement, or on such other date as may be mutually agreed by the parties, but in any event (subject to Sections 10.1(b)(vi) and 10.1(c)(iii)) not later than March 14, 2014. The Closing shall take place at the offices of Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine, or such other place as Sellers and Purchaser shall agree, and shall be effective as of 11:59 p.m. Portland, Maine time on the date of Closing (the “Closing Date”).

2.7 Allocation of Purchase Price. The Purchase Price shall be allocated in accordance with Schedule 2.7 to Real Property and other Assets. Each of MMA, MMA Canada, and Purchaser hereby covenants and agrees that it will not take any position inconsistent with the Purchase Price allocations set forth on Schedule 2.7 on any tax return.

ARTICLE III **REPRESENTATIONS AND WARRANTIES OF SELLERS**

As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers hereby represent and warrant to Purchaser as follows, conditioned upon and subject to the entry of the Sale Order and Vesting Order:

3.1 Organization and Authority. Each Seller is duly organized and validly existing under the laws of the jurisdiction of its organization and, subject to any required approval of the Bankruptcy Court or the Canadian Court, and any required approval of applicable regulatory and Governmental Authorities, has the power and authority to enter into the transactions contemplated by this Agreement.

3.2 Authority and Binding Agreement. This Agreement has been duly authorized, executed and delivered by MMA and, subject to the approval of the

Bankruptcy Court, is the valid and binding obligation of MMA. This Agreement has been duly authorized, executed and delivered by MMA Canada and, subject to the approval of the Canadian Court, is the valid and binding obligation of MMA Canada. Subject to the approval of the Bankruptcy Court and the Canadian Court, this Agreement is enforceable against each of MMA and MMA Canada in accordance with its terms.

3.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing, or registration with, any Governmental Authorities is required to be made or obtained by either Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein, except for: (a) consents, approvals, or authorizations of, or declarations or filings with, the Bankruptcy Court and the Canadian Court; (b) the filing of such deeds, assignments or other conveyance documents as may be required to transfer Sellers' interest in any Assets, the title to which is governed by filing in the public records; (c) the filing of such documents as may be necessary to reflect the release of any security interests, Liens, pledges, charges, escrows, options, rights of first refusal, mortgages, indentures, security interests or other encumbrances as a matter of public record; (d) any consents related to permits and licenses transferred or assigned to Purchaser hereunder; (e) any necessary approval, authorization or exemption by the United States Department of Transportation, the Federal Railroad Administration, Surface Transportation Board, and any other Governmental Authorities with jurisdiction over and the right to approve the sale, taking into account Sections 1161-1174 of the Bankruptcy Code; (f) any consents, approvals, or authorizations of Transport Canada required to obtain a Certificate of Fitness; and (g) approval of a railway safety plan with Transport Canada pursuant to the Railway Safety Act.

3.4 Title to and Condition of Assets. Sellers have good record title to, or a valid leasehold interest in, as applicable, all of the Assets, in each case free and clear of all liabilities, security interests, Liens (including tax liens), mortgages, Claims, encumbrances, rights, remedies and interests of any kind whatsoever, except for (i) permitted encumbrances as to the Real Property (as defined in Section 3.5 below) and (ii) those Liens, Claims, encumbrances, remedies and interests that will be released pursuant to the Sale Order and Vesting Order.

3.5 Owned and Leased Real Property. Attached hereto as Schedule 3.5 is a true and complete list of all real estate, immovables and real property and immovable rights (whether in the form of ownership or leasehold rights) held by Sellers and included in the Assets (the "Real Property"), including the nature of such party's ownership interest therein. The Real Property includes the rail yards and other operating facilities identified on Schedule 3.5 and the uninterrupted railroad rights-of-way over the routes identified on Schedule 3.5, sufficient to permit continuous railroad operations by Purchaser along those routes following Closing, except to the extent disclosed in Schedule 3.5A relating to the track reconstruction, relocation and reconnection in Lac Megantic, Province of Québec.

3.6 As Is/Where Is. Subject to the representations and warranties set forth in this Article III, the Purchaser will acquire the Assets on an "as is," "where is" and "with

all defects” basis free and clear of any Liens, Claims, encumbrances or interests to the extent provided by the Bankruptcy Code and the CCAA, except as specifically permitted herein, as approved for sale, transfer and assignment pursuant to the Sale Order and the Vesting Order.

3.7 Litigation. Except as Sellers shall disclose not less than ten (10) days before the hearings at which the Sale Order and the Vesting Order are entered (the “Sale Hearings”) in the Sellers’ virtual data room, on the Sellers’ publicly filed schedules of assets and liabilities and statements of financial affairs and as set forth on Schedule 3.7, the Sellers, to the best of their knowledge, are not aware of any pending or threatened investigations, lawsuits, actions, Claims, or legal or administrative proceedings against or relating to the Assets, or the business of MMA or MMA Canada, whether at law or in equity, or before or by any Federal, state, provincial, local, foreign or other governmental court, department, ministry, commission, board, bureau, agency or instrumentality which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Assets (without accounting for the effect of the Sale Order and the Vesting Order) or impose any costs on Purchaser after Closing or affect the ownership and/or the operation of the railroad business of Purchaser following Closing. Except as Sellers shall disclose not less than ten (10) days before the Sale Hearings in the Sellers’ virtual data room, on the Sellers’ publicly filed schedules of assets and liabilities and statements of financial affairs and as set forth on Schedule 3.7, to the best of the Sellers’ knowledge, there are no judgments, decrees, injunctions or orders of any court, governmental department, ministry, commission, board, bureau, agency, instrumentality or arbitrator against or relating to the Assets which, individually or in the aggregate, (without accounting for the effect of the Sale Order and the Vesting Order) could reasonably be expected to have a material adverse effect on the Assets or the operation of the railroad business of Purchaser following Closing.

3.8 Contracts and Leases. To the best of the Sellers’ knowledge, all material contracts, agreements, licenses, permits, certificates, and other arrangements, oral or written (collectively, the “Contracts”) that pertain to or affect the Assets, or any part thereof, or any of the Sellers’ business operations, are disclosed in the Sellers’ virtual data room, on the Sellers’ publicly filed schedules of assets and liabilities and as set forth on Schedule 3.8A. To the best of the Sellers’ knowledge, all material lease agreements (collectively, the “Leases”) that pertain to or affect the Assets, or any part thereof, or either Seller’s business operations are disclosed in the Sellers’ virtual data room, on the Sellers’ publicly filed schedules of assets and liabilities and as set forth on Schedule 3.8B. Sellers shall have made available to Purchaser true and correct copies of all Contracts and Leases disclosed in the Sellers’ virtual data room, on the Sellers’ publicly filed schedules of assets and liabilities and as set forth on Schedule 3.8A and Schedule 3.8B, within five (5) days after the date hereof. Should Sellers enter into any new Contract or Lease between the date of execution of this Agreement and March 14, 2014, Sellers shall promptly add such Contract or Lease to Schedule 3.8A or Schedule 3.8B, as applicable, and shall promptly provide Purchaser with true and correct copies of any such new Contract or Lease.

3.9 Material Adverse Changes. Except as specifically set forth on Schedule 3.9, there has not been since the Filing Date:

(a) any damage, destruction or loss (whether or not covered by insurance) affecting any asset or property of any Seller that is material to the conduct of the Sellers' business;

(b) any sale, lease, abandonment or other disposition by Sellers or any of them in any interest in machinery, equipment, fixtures, inventory or other operating property used in the Sellers' businesses, including without limitation, the Real Property, or any sale, assignment, transfer, license or other disposition by Sellers or any of them of any intangible asset relevant to the Sellers' businesses, other than in the ordinary course of business;

(c) any material labor dispute, organizational effort (including without limitation any negotiation or request for negotiation for any representation or any labor contract) with respect to the Sellers or any of them, whether or not affecting the Sellers' business or the Assets;

(d) any other occurrence, event or condition to Sellers' knowledge that adversely affects or could adversely affect the Assets or the Sellers' businesses.

3.10 Employees. Except as prohibited by applicable law, Sellers have made available (or will make available within two (2) Business Days after the date hereof) to Purchaser Schedule 3.10, which sets forth a list of all employees employed in the conduct of the business of each Seller as of the date specified therein, including the following information for each such employee: (i) name and location; (ii) part-time or full-time status; (iii) title, job description and responsibilities; (iv) employment commencement date; (v) annual base salary or hourly wage; (vi) available bonus or other contingent compensation; (vii) accrued and unused vacation days; (viii) accrued and unused sick days; (ix) if on leave, the status of such leave (including reason for leave and expected return date); (x) whether such employee is employed under an employment contract or on an at-will basis; and (xi) whether such employee has or had any responsibilities, involvement, or connection with respect to any of the Assets or Assumed Liabilities. No later than five (5) days prior to Closing, Sellers shall provide to Purchaser an updated Schedule 3.10, which shall contain the information set forth in this Section 3.9 for each Seller as of the date of such updated Schedule 3.10.

3.11 MMA Canada GST/HST and QST Registration. MMA Canada is duly registered for the GST/HST under Part IX of the ETA under account number 852913532RT0001. MMA Canada is duly registered for the QST under the QST Act under account number 1202638984.

3.12 MMA Canada is not a non-resident of Canada for purposes of the Tax Act.

3.13 None of the MMA Assets constitute "taxable Canadian property" within the meaning of the Tax Act.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

4.1 Due Organization, Etc. Purchaser is duly organized and validly existing under the laws of the jurisdiction of its organization and has the power and authority and all necessary governmental approvals to enter into the transactions contemplated by this Agreement. Purchaser is duly qualified to do business in each jurisdiction where Purchaser does business.

4.2 Authority and Binding Agreement. This Agreement has been duly authorized, executed and delivered by the Purchaser and, subject to the approval of the Bankruptcy Court and the Canadian Court, is the valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

4.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing, or registration with, any Governmental Authority is required to be made or obtained by Purchaser in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein, except for (a) consents, approvals, or authorizations of, or declarations or filings with, the Bankruptcy Court and the Canadian Court; (b) the filing of such deeds, assignments or other conveyance documents as may be required to transfer Sellers' interest in any Assets, the title to which is governed by filing in the public records; (c) consents and approvals necessary to transfer the permits and licenses being purchased by the Purchaser hereunder; (d) any necessary approval, authorization or exemption by the United States Department of Transportation, the Federal Railroad Administration, Surface Transportation Board, and any other Governmental Authorities with jurisdiction over and the right to approve the sale, taking into account Sections 1161-1174 of the Bankruptcy Code; (e) any consents, approvals, or authorizations of Transport Canada required to obtain a certificate of fitness; (f) approval of a railway safety management system pursuant to the Railway Safety Act, and (g) consents, approvals, authorizations, declarations, filings or registrations which, if not obtained, individually or in the aggregate, would not have a material adverse effect on the transactions contemplated in this Agreement.

4.4 Litigation. There is no action, suit, inquiry, proceeding or investigation by or before any court or Governmental Authority or other regulatory or administrative agency or commission pending, or, to the knowledge of Purchaser, threatened against Purchaser that questions or challenges the validity of this Agreement or in connection with the transactions contemplated thereby. As of the date hereof, to Purchaser's knowledge, there are no circumstances or facts that would prevent Purchaser from engaging in the transactions contemplated in this Agreement.

4.5 WHERE-IS/AS-IS. Except as otherwise expressly stated in this Agreement, Purchaser and any assignee(s) agree to accept the Assets in a "WHERE-IS,

AS-IS” condition as of the Closing Date free and clear of any Liens, Claims, encumbrances, rights, remedies or interests, except as specifically permitted in this Agreement. Without limitation of the foregoing, Purchaser acknowledges, represents and warrants to each Seller that Purchaser has not been induced to execute this Agreement by any act, statement or representation of such Seller or its agents, employees or other representatives not expressly set forth in this Agreement.

4.6 Financing. At the Closing, Purchaser will have sufficient immediately available funds to pay the Purchase Price and all other amounts payable pursuant to this Agreement, the other agreements contemplated herein, and the transactions contemplated herein and thereby. Upon the consummation of the transactions contemplated herein, Purchaser will not be insolvent, be left with unreasonably small capital, or have incurred debts beyond its ability to pay such debts as they mature.

4.7 Purchaser GST/HST and QST Registration. As of the Closing Date, Purchaser or its assignee(s) shall be duly registered for the GST/HST under Part IX of the ETA and for the QST under the QST Act.

ARTICLE V

COVENANTS PRIOR TO AND IN FURTHERANCE OF CLOSING

5.1 Affirmative and Negative Covenants Pending Closing. Except as expressly set forth below, during the period from the date hereof to the Closing Date:

(a) Sellers’ Covenants.

(i) Affirmative Covenants Pending Closing. Each Seller covenants and agrees that it shall, unless otherwise agreed to in writing by Purchaser:

(1) Maintenance. Maintain the Assets owned, leased or operated by it in at least the same condition as those Assets are as of the date of execution of this Agreement, subject only to ordinary wear and tear. Each Seller (as applicable) shall perform all of its obligations under the MMA Operating Agreements, MMA Canada Operating Agreements, MMA Assigned Leases, the MMA Canada Assigned Leases, the MMA Assigned Contracts and the MMA Canada Assigned Contracts.

(2) Operation of Business. Conduct its business in the ordinary course. Without limiting the foregoing, except as expressly consented to by Purchaser in writing, from the date hereof until the Closing Date, each Seller covenants and agrees (i) to take no action which could reasonably be expected to affect or result in a material adverse change in the Assets, (ii) to operate its business as a going concern in the ordinary course and to use its commercially reasonable efforts to preserve and maintain any and all material vendor, customer and other business relationships as

they pertain to such Seller's business or the Assets; (iii) not to purchase or dispose of any of the Assets except in the ordinary course of business; (iv) not to enter into any material commitment, obligations or agreement with respect to or affecting the Assets or the rail business of MMA or MMA Canada (as applicable), provided, however, that the Sellers may enter into a lease amendment with the municipality of Lac Megantic, Province of Québec as to the relocated rail lines, provided that such lease amendment is not binding on Purchaser and will not affect Purchaser's operation of MMA Canada's business; (v) to take no action which could reasonably be expected to impair or frustrate the purposes of this Agreement or the transactions contemplated hereby; and (vi) to maintain in full force and effect all insurance coverage currently insuring the Assets.

(3) Court Orders. Use its best efforts to secure all required approvals by the Bankruptcy Court and the Canadian Court, without modification, of the Expense Reimbursement and Break-Up Fee provisions set forth in Section 5.4 of this Agreement, the Stalking Horse Charge, the Bid and Auction Procedures set forth in Article VI of this Agreement, the Assumption, Assignment and Cure Protocol and the sale of the Assets pursuant to the terms hereof, and shall otherwise use its best efforts to cause the consummation of the transactions contemplated by this Agreement in accordance with the terms and conditions hereof.

(4) Notification of Certain Matters. To the extent not prohibited by law, Sellers shall notify Purchaser of (i) any material adverse change relating to the Assets; (ii) any governmental or third party complaint, investigation or hearing (or communications indicating that any are contemplated); (iii) any material breach by any Seller of any agreement or representation or warranty hereunder; (iv) any judicial, regulatory, administrative, enforcement or other proceeding or action commenced against any Seller in the United States or Canada; (v) any reports, determinations or findings issued by any Governmental Authority regarding the Derailment, any of the Sellers or the Assets; (vi) any change in any license, certificate of fitness or other authority for any of the Sellers to operate their respective business or operate as a railroad under applicable law or procedure; and (vii) any environmental enforcement actions, rulings or orders under any applicable Environmental Laws, including, without limitation, any remediation or clean-up orders, issued with respect to any of the Sellers or the Assets.

(5) Employees. Sellers shall use their commercially reasonable efforts to make all employees who are employed by MMA and/or MMA Canada available for employment by Purchaser, and will cooperate with Purchaser in securing the services of such of those employees Purchaser elects in its sole and absolute discretion to offer employment. Each Seller hereby acknowledges that Purchaser assumes no responsibilities of or to Sellers with respect to Sellers' employees, except as expressly provided herein. With respect to each employee of the Sellers, if any, to which Purchaser makes an offer of employment, each Seller covenants and agrees that it shall not, directly or indirectly, attempt to entice, induce or influence any such employee to either not accept the employment offer from Purchaser or to leave such employment with Purchaser.

(6) Contracts and Leases. Sellers shall continue to (i) pay in the ordinary course all amounts when and as due under all Contracts and Leases that relate to or affect any of the Assets or either of the Sellers' business operations, and (ii) perform all other obligations when and as due under such Contracts and Leases; provided, however, that the foregoing sentence shall not apply to any Contracts or Leases that (a) have been rejected by any of the Sellers prior to the date hereof in accordance with applicable law or (b) are rejected by either of the Sellers on or after the date hereof, in accordance with applicable law, if and to the extent that the Sellers have been notified by Purchaser that such Contracts or Leases will not be assumed and assigned hereunder.

(ii) Negative Covenants Pending Closing. Except as expressly permitted herein, Sellers shall not, without the prior written consent of Purchaser (which shall not be unreasonably withheld):

(1) Assigned Leases and Assigned Contracts. Assume, assign, reject, renew, amend or voluntarily terminate any Assigned Lease or Assigned Contract.

(2) Encumbrances. Encumber, sublease or otherwise grant any Liens or other rights or interests with respect to the Assets, provided, however, that Sellers may continue to borrow money under any debtor-in-possession financing arrangements approved by the Bankruptcy Court and/or the Canadian Court, including as the same may be amended, modified, or increased, and MMA Canada may seek the imposition or increase of charges for administrative costs of the Canadian Proceeding as permitted by the CCAA.

(3) Limited Non-Solicitation. From the date hereof until the earlier of the entry of the Bid Procedures Orders (as defined in Section 6.1 hereof) or the termination of this Agreement, solicit any person to replace the Purchaser as the stalking horse bidder for the Assets.

(4) Contracts. Enter into any contract, lease or other agreement affecting the Assets or the rail business of Sellers that will be binding on Purchaser in any case, from and after the execution of this Agreement, provided, however, that the Sellers may enter into a lease amendment with the municipality of Lac Megantic, Province of Québec as to the relocated rail lines, provided that such lease amendment is not binding on Purchaser or will not affect Purchaser's operation of MMA Canada's business.

(5) Intellectual Property. From the date hereof until the Closing, Sellers shall not take any action, or fail to take any action, that would have a material adverse effect on any Intellectual Property of Sellers, impair the value of such Intellectual Property, or materially impair or interfere with the ability of Purchaser to exercise any and all rights in and to Intellectual Property of Sellers from and after the Closing.

(6) Employee Wages/Salary. Without the prior written consent of Purchaser, Sellers shall not (1) enter into any new collective bargaining agreement with any labor organization representing a Seller's employees; (2) agree to amend or modify any existing collective bargaining agreement between such Seller and its employees; (3) agree to any increase in the wages, salary or benefits payable to any employee; and/or (4) enter into any agreement obligating a Seller (or Purchaser) to pay to any employee any deferred wages or compensation, bonus or commission. Notwithstanding the foregoing, Sellers may pay retention bonuses or similar compensation to employees in order to retain their services during the period prior to the Closing, provided that such bonus or compensation arrangements shall not impose any obligation on Purchaser.

(b) Purchaser's Covenants. Subject to the Cure Cost Cap, Purchaser covenants and agrees that it shall, with respect to the MMA Assigned Contracts, the MMA Canada Assigned Contracts, the MMA Assigned Leases and the MMA Canada Assigned Leases, use good faith efforts to provide adequate assurance as required under the Bankruptcy Code and any comparable provision of the CCAA of the future performance by Purchaser under such MMA Assigned Contracts, the MMA Canada Assigned Contracts, the MMA Assigned Leases and the MMA Canada Assigned Leases. Purchaser agrees that it shall use its good faith efforts to take, or cause to be taken, all actions reasonably requested by Sellers to assist

in obtaining entry of the Sale Order and the Vesting Order, such as furnishing affidavits, non-confidential financial information or other documents or information for filing with the Bankruptcy Court and the Canadian Court, and making Purchaser's employees and representatives available to testify before the Bankruptcy Court and the Canadian Court, for the purpose of demonstrating adequate assurance of future performance by Purchaser under the MMA Assigned Contracts, the MMA Canada Assigned Contracts, the MMA Assigned Leases and the MMA Canada Assigned Leases.

5.2 Consents and Further Actions. Subject to the terms and conditions herein provided, Sellers and Purchaser covenant and agree to use their good faith efforts to take, or cause to be taken, all actions, or do, or cause to be done, all things, necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated in this Agreement, including all closing conditions to be satisfied. This Section 5.2 shall survive the Closing of the transactions contemplated in this Agreement.

5.3 Tax Cooperation and Exchange of Information. Each party hereto will provide the other parties with such cooperation and information as may be reasonably requested in filing any tax return, amended tax return, or claim for refund, determining any liabilities for Taxes or a right to refund of Taxes, or participating in or conducting any audit or other proceeding with respect to taxes relating to the Assets. Such cooperation and information shall include providing copies of relevant tax returns or portions thereof, together with accompanying schedules and related work papers and documents relating to rulings or other determinations by taxing authorities. Purchaser and MMA Canada shall jointly make the elections provided for under subsections 167(1) and (1.1) of the ETA and under sections 75 and 75.1 of the QST Act so that no GST/HST or QST will be payable in respect of the disposition of MMA Canada Assets contemplated by this Agreement. Purchaser and MMA Canada shall jointly complete the election forms (more particularly described as form GST-44 and QST form FP-2044-V) in respect of such elections, and Purchaser shall file the said election forms with the applicable taxing authorities no later than the due date for the Purchaser's GST/HST and QST returns for the first reporting period in which GST/HST or QST, as applicable, would, in the absence of such elections, become payable in connection with the disposition of MMA Canada Assets contemplated by this Agreement. The Purchaser shall indemnify the Seller against any tax, interest or penalties imposed on the Seller resulting from a determination by the tax authorities that the conditions for filing the elections pursuant to section 167(1) of the ETA and section 75 of the QST have not been satisfied for any reason (other than as a result of the failure of the Seller to perform its obligations pursuant to this Section 5.3).

5.4 Break-Up Fee; Deposit; Expense Reimbursement. This Agreement is subject to other offers presented to the Sellers solely in accordance with the Bid Procedures Orders (as defined in Section 6.1 hereof). In the event that the Bankruptcy Court and/or the Canadian Court in accordance with the Bid Procedures Orders determines that one or more offers for all or any portion of the Assets included in the sale transactions contemplated by this Agreement submitted pursuant to the Bid Procedures

Orders is higher or better than the terms set forth in this Agreement, or that a sale of all or any portion of such Assets to an alternative purchaser or purchasers is in the public interest as used in Subchapter IV of Chapter 11, and approves any such offer or offers in lieu of this Agreement, then Sellers shall return the Deposit (and any interest accrued thereon) to the Purchaser in accordance with Section 2.4(b) of this Agreement and, within three (3) Business Days after the closing of any sale pursuant to such other offer or offers, (i) shall pay to Purchaser, by wire transfer of immediately available funds, a break-up fee in the amount of Four Hundred Ninety-Eight Thousand Seven Hundred Fifty Dollars (\$498,750.00) (the “Break-Up Fee”), and (ii) shall also reimburse Purchaser for its actual reasonable expenses incurred in connection with this Agreement and any related proceedings before the Bankruptcy Court and/or the Canadian Court in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) (the “Expense Reimbursement”). For the avoidance of doubt, in the case of multiple sale transactions, the Sellers shall, within three (3) Business Days after the closing of the first such sale transaction, pay the Break-Up Fee and the Expense Reimbursement from the proceeds of such sale transaction and, if necessary, within three (3) business days of the closing of each subsequent sale transaction, pay the balance of the Break-Up Fee and the Expense Reimbursement from the proceeds of each such sale transaction. The Sellers shall be jointly and severally liable for the Break-Up Fee and the Expense Reimbursement, and the Break-Up Fee and Expense Reimbursement shall constitute administrative priority expenses under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code and pursuant to a charge over all of the property of MMA Canada granted by the Canadian Court in its Bid Procedures Order that puts the Purchaser in the same legal position relative to the property of MMA Canada as the foregoing provisions of the Bankruptcy Code put the Purchaser relative to the property of MMA (the “Stalking Horse Charge”). The Break-Up Fee and the Expense Reimbursement shall be Purchaser’s sole remedy as a result of a sale of the Assets pursuant to any other offer in accordance with the Bid Procedures Orders. Purchaser’s entitlement to the Break-Up Fee and Expense Reimbursement, on the terms set forth herein, is contingent upon Purchaser’s waiver of the conditions set forth in Sections 8.2(i), 8.2(k), and 8.2(m) within two (2) Business Days prior to the Auction (as defined in the Bid Procedures described in Section 6.1 below).

5.5 Delivery of Schedules; Access and Information. As soon as reasonably practicable, and in no event later than eight (8) days after the execution of this Agreement, the parties shall exchange draft copies of all Schedules contemplated by this Agreement. All such Schedules relating to Article III hereof shall be completed, in any event, no later than five (5) days before the Sale Hearings, and all other Schedules shall be completed prior to the Closing. Notwithstanding the foregoing, Purchaser shall have the right, at its sole option and discretion, until five (5) days before the Closing, to add or remove Contracts, Leases or other assets from the Schedules pursuant to Sections 2.1(a)(v), 2.1(a)(vi), 2.1(b)(v) and 2.1(b)(vi) of this Agreement, and such Contracts, Leases or other assets shall be added to (or removed from) such Schedules as specified by Purchaser.

5.6 Financial Statements Cooperation and Assistance. At Purchaser’s sole cost and expense, the Sellers shall reasonably cooperate with Purchaser in a timely manner as reasonably requested by Purchaser in connection with Purchaser’s preparation

of historical financial statements and pro forma financial information in respect of the Assets, including making reasonably available to Purchaser the Sellers' employees, allowing Purchaser to access and, at Purchaser's expense, copy any and all records in Sellers' possession relating to the Assets, providing reasonable assistance to Purchaser in connection with the preparation of such financial statements, facilitating the delivery from the Sellers' independent public accountants relevant consent letters necessary in connection with the foregoing, and providing customary management representation letters required by accountants.

ARTICLE VI

BID AND AUCTION PROCESS

6.1 Court Actions.

(a) Within five (5) days of the execution of this Agreement, motions will be filed with the Bankruptcy Court and the Canadian Court (each a "Bid Procedures Motion") seeking an order approving the Break-Up Fee, the Expense Reimbursement, an initial minimum bid increment of One Million Four Hundred Ninety-Eight Thousand Seven Hundred Fifty Dollars (\$1,498,750.00) (the "Initial Minimum Overbid"), subsequent bid increments of Five Hundred Thousand Dollars (\$500,000.00) (the "Minimum Overbid") (the Minimum Overbid being subject to reduction by the Sellers at Auction), and other bidding procedures (collectively, the "Bid Procedures"). The Bid Procedures contained in the Bid Procedures Motions must be approved by the Bankruptcy Court and the Canadian Court, respectively, by no later than December 23, 2013 (each a "Bid Procedures Order"). Within five (5) days of the execution of this Agreement, motions also will be filed, as part of the Bid Procedures Motions or otherwise, with the Bankruptcy Court and the Canadian Court (the "Assumption, Assignment and Cure Protocol Motions") seeking orders approving the procedures by which Sellers may assume and assign the Assigned Contracts and Assigned Leases to Purchaser, which procedures shall include, without limitation, the forms and notices to be used in connection with the assumption and assignment of Contracts and Leases and the procedures for curing any defaults under Section 365 of the Bankruptcy Code and any analogous or applicable provision of the CCAA and in accordance with Section 7.3 hereof (collectively, the "Assumption, Assignment and Cure Protocol"). The Assumption, Assignment and Cure Protocol contained in the Assumption, Assignment and Cure Protocol Motions must be approved by the Bankruptcy Court and the Canadian Court, respectively, pursuant to orders, as part of the Bid Procedures Orders or otherwise by no later than December 23, 2013 (each an "Assumption, Assignment and Cure Protocol Order").

(b) The Sellers shall file with the Bankruptcy Court and the Canadian Court, and prosecute in good faith, all such necessary motions or applications seeking approval of this Agreement, subject to higher and better offers, or offers in the public interest as used in Subchapter IV of Chapter 11, in accordance with the Bid Procedures. The Sellers shall use their best efforts to effectuate the entry

of the Sale Order and the Vesting Order as soon thereafter as possible but in no case later than January 31, 2014.

(c) The Sellers shall comply (or obtain an order from a competent court waiving compliance) with all applicable laws, rules and regulations, including, without limitation, requirements under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the CCAA, any applicable procedural rules governing the Canadian Proceeding, in obtaining the Bid Procedures Orders, the Assumption, Assignment and Cure Protocol Orders, the Sale Order and the Vesting Order.

6.2 Compliance with Bidding Procedures; Maintenance of Confidentiality.

(a) The Sellers shall comply with the Bid Procedures established or approved by the Bankruptcy Court and the Canadian Court.

(b) The Sellers shall provide or make available to the Purchaser any document that it has provided to any third party in accordance with the Bid Procedures that has not previously been made available to the Purchaser, other than documents which are maintained in the “due diligence room” or “virtual data room” of the Sellers and which are generally available to all bidders.

(c) The Sellers shall not release any person or entity from, or waive any provisions of, any confidentiality agreement entered into in accordance with the Bid Procedures, without the Purchaser’s prior written consent.

ARTICLE VII
ASSIGNMENT OF LEASES AND CONTRACTS

7.1 Post-Closing Expenses. Except as otherwise provided in this Agreement, all obligations with respect to the Assigned Leases and the Assigned Contracts arising from and after the Closing Date shall be the sole responsibility of Purchaser.

7.2 Conditions to Assignment. Subject to Purchaser’s rights under Sections 2.1(a)(v), 2.1(a)(vi), 2.1(b)(v), 2.1(b)(vi) and 5.5, it shall be a condition to assignment of any Assigned Lease or Assigned Contract that Purchaser shall have at its sole cost (a) cured any monetary default arising under the Assigned Lease or Assigned Contract and outstanding as of the Closing Date and required to be paid under Section 365 of the Bankruptcy Code and Section 11.3 of the CCAA; and (b) cured or demonstrated its ability to cure any other defaults with respect to the Assigned Lease or Assigned Contract, as provided in Section 365 of the Bankruptcy Code and Section 11.3 of the CCAA, so that such Assigned Lease or Assigned Contract may be assigned to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code and Section 11.3 of the CCAA; provided, however, that Purchaser shall not be obligated to cure any such default that is in dispute as of the Closing Date if an escrow or other commercially reasonable arrangement with respect thereto shall have been established pursuant to an order of the Bankruptcy Court and/or the Canadian Court.

7.3 Assumption, Assignment and Cure Protocol. As set forth in Section 6.1 hereof, the Sellers shall seek approval by the Bankruptcy Court and the Canadian Court, as part of the Bid Procedures Orders or otherwise, of the Assumption, Assignment and Cure Protocol. The Assumption, Assignment and Cure Protocol, including, without limitation, the forms and notices to be used in connection with the assumption, assignment and cure of Contracts and Leases, shall be in form and substance satisfactory to Purchaser.

ARTICLE VIII **CONDITIONS PRECEDENT TO CLOSING**

8.1 Conditions to Sellers' Obligation to Close. Sellers' obligation to consummate the transactions contemplated in this Agreement is subject, at the option of Sellers, to the satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

(a) Representations and Warranties; Covenants.

(i) All representations and warranties of Purchaser contained in this Agreement and any related transaction documents shall have been true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date, as if such representations and warranties were made at and as of the Closing Date (except for those representations and warranties that, by their terms, apply only as of an earlier date, which shall have been true and correct as of such date), and Sellers shall have received a certificate, dated as of the Closing Date and signed by an authorized representative of Purchaser, to that effect.

(ii) Purchaser shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date, and Sellers shall have received a certificate, dated as of the Closing Date and signed by an authorized representative of Purchaser, to that effect.

(b) No Injunction. No injunction, stay or restraining order shall be in effect prohibiting the consummation of the transactions contemplated in this Agreement.

(c) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such order shall have become a Final Order.

(d) Vesting Order. The Canadian Court shall have entered the Vesting Order and such order shall have become a Final Order.

(e) Purchaser's Deliveries. Purchaser shall have paid the Purchase Price, less the Deposit, and shall have duly executed and delivered to Sellers each

of the documents, instruments and agreements required to be delivered pursuant to Section 8.3(b) of this Agreement.

(f) Governmental Permits. All Governmental Permits, authorizations and/or exemptions (including, without limitation, any required United States Surface Transportation Board and Canadian Transportation Agency approvals, authorizations and/or exemptions) required to be obtained in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

8.2 Conditions to Purchaser's Obligation to Close. Purchaser's obligation to consummate the transactions contemplated in this Agreement is subject, at the option of Purchaser, to the satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

(a) Representations and Warranties; Covenants.

(i) All representations and warranties of Sellers contained in this Agreement and any related transaction documents shall have been true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date, as if such representations and warranties were made at and as of the Closing Date (except for those representations and warranties that, by their terms, apply only as of an earlier date, which will be true and correct as of such date), and Sellers shall have delivered to Purchaser a certificate, dated as of the Closing Date and signed by an authorized representative of Sellers, to that effect.

(ii) Each Seller shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date, and Sellers shall have delivered to Purchaser a certificate, dated as of the Closing Date and signed by an authorized representative of Sellers, to that effect.

(b) Sellers' Deliveries. Each of MMA and MMA Canada shall have duly executed and delivered to Purchaser each of the documents, instruments and agreements required to be delivered by MMA and/or MMA Canada (as applicable) pursuant to Section 8.3(a) of this Agreement.

(c) Bid Procedures Orders. The Bid Procedures shall be in form and substance satisfactory to Purchaser, and, on or before December 23, 2013, the Bankruptcy Court and the Canadian Court shall have entered the Bid Procedures Orders in form and substance satisfactory to Purchaser expressly approving the Break-Up Fee, the Expense Reimbursement, and the Bid Procedures set forth in the Sellers' Bid Procedures Motions, and such orders shall have become Final Orders.

(d) Assumption, Assignment and Cure Protocol Orders. On or before December 23, 2013, the Bankruptcy Court and the Canadian Court shall have entered, as part of the Bid Procedures Orders or otherwise, the Assumption, Assignment and Cure Protocol Orders in form and substance satisfactory to Purchaser, and such order shall have become a Final Order.

(e) Sale Order. On or before January 31, 2014, the Bankruptcy Court shall have entered the Sale Order in form and substance satisfactory to Purchaser, and such order shall have become a Final Order.

(f) Vesting Order. On or before January 31, 2014, the Canadian Court shall have entered the Vesting Order in form and substance satisfactory to Purchaser, and such order shall have become a Final Order.

(g) No Injunction or Challenge. No injunction, stay or restraining order shall be in effect prohibiting the consummation of the transactions contemplated in this Agreement. No law, ordinance or regulation shall have been enacted, and no order, judgment, or decree shall have been enacted or rendered by a Governmental Authority or any other person (and not subsequently dismissed, settled, withdrawn or terminated, nor shall any petition, complaint, or action have been filed or be pending that seeks such order, judgment or decree) which would prevent the consummation at the Closing of or restrain or invalidate the transactions contemplated by this Agreement.

(h) Governmental Permits. All Governmental Permits, authorizations and/or exemptions (including, without limitation, any required United States Surface Transportation Board, Transport Canada and Canadian Transportation Agency approvals, authorizations and/or exemptions) required to be obtained in connection with the consummation of the transactions contemplated by this Agreement and the operation of the MMA Lines and MMA Canada Lines by Purchaser from and after Closing shall have been obtained in form and substance satisfactory to Purchaser and be in full force and effect, including that Purchaser shall have obtained a Canadian Transportation Agency decision that indicates that the Agency will issue a Certificate of Fitness to Purchaser authorizing it to operate a railway in Canada. Such Governmental Permits shall not be subject to any condition (other than statutory labor protective conditions) that, in Purchaser's sole judgment, would adversely affect the operation of the MMA Lines and MMA Canada Lines by Purchaser from and after Closing.

(i) Environmental Review. Purchaser shall have determined, in its reasonable judgment, that there do not exist Environmental Liabilities that would impose material remediation costs or other material liabilities or obligations on Purchaser. Without limiting the generality of the foregoing sentence, Purchaser shall have received adequate assurance, in form and substance reasonably satisfactory to Purchaser, that no Governmental Authority, including, without limitation, the environmental authorities of Canada and/or the Province of

Québec, shall seek to hold Purchaser responsible for Environmental Liabilities arising from or relating to the Derailment.

(j) Contiguous Line of Railroad. Purchaser shall have determined in its sole judgment that the Assets conveyed and transferred to it at Closing, and the Governmental Permits, are sufficient to enable Purchaser to operate uninterrupted through train service over the entirety of the MMA Lines and the MMA Canada Lines from and after the Closing Date. Purchaser shall have obtained written assurance, in form and substance satisfactory to Purchaser in its sole judgment, that the temporary rail line in and through the town of Lac Megantic, Quebec (including the segment that is subject to the lease referred to in Section 5.1(a)(ii)(4) of this Agreement) will, within two (2) years of the Closing Date, become a permanent railroad line or be replaced by a permanent railroad line (or lines) in and through the town of Lac Megantic to be constructed on the right-of-way upon which MMA Canada's rail lines were located prior to July 5, 2013 or via such alternate route as MMA Canada, Purchaser and any applicable Governmental Authority may agree in writing, in each case on terms and conditions reasonably satisfactory to Purchaser.

(k) Governmental Restrictions. Purchaser shall have determined that there are no governmental restrictions that would prohibit or unreasonably restrict or interfere with the use of the Assets for Purchaser's intended purpose.

(l) Insurance Coverage. Purchaser shall have been able to obtain insurance coverage for the operation of the MMA Lines and the MMA Canada Lines, in each case on terms and conditions acceptable to Purchaser.

(m) No Material Adverse Change. There shall have been no material adverse change in the operations, prospects or financial condition of the Sellers' businesses or the Assets since the Filing Date.

(n) Due Diligence. Until two (2) days prior to the Auction, Purchaser shall have had an opportunity to conduct such due diligence of the Assets as Purchaser, in its sole judgment, deems necessary and appropriate in connection with the transactions contemplated by this Agreement, and Purchaser shall be satisfied in all material respects with the results of such due diligence.

(o) LMS Acquisition. Purchaser shall have entered into an agreement, on terms and conditions satisfactory to Purchaser in its sole discretion (including, without limitation, a break-up fee and expense reimbursement on substantially the same terms as set forth in Section 5.4 hereof), to acquire substantially all of the assets (or such lesser portion of such assets designated by Purchaser) of LMS Acquisition Corp., a Delaware corporation ("LMS"), which sale transaction shall close simultaneously with, or prior to, the Closing, and the sale of such assets to Purchaser shall be free and clear of any Liens, Claims, encumbrances or interests pursuant to either (i) a Final Order, in form and substance satisfactory to Purchaser, entered by the Bankruptcy Court (in a bankruptcy case involving

LMS) approving the sale of such assets on substantially the same terms as set forth in the Sale Order, or (ii) some other process under applicable law in form and substance satisfactory to Purchaser.

8.3 Deliveries at Closing.

(a) Deliveries by Sellers. At the Closing, Sellers shall deliver or cause the delivery of the following to Purchaser:

- (i) a certified copy of the Sale Order;
- (ii) a certified copy of the Vesting Order;
- (iii) a certified copy of the Assumption, Assignment and Cure Protocol Orders;
- (iv) with respect to the Real Property Quitclaim Deeds or deeds of sale, as applicable, without covenants, duly executed by MMA or MMA Canada (as applicable), in a form reasonably satisfactory to Purchaser.
- (v) with respect to the tangible and intangible personal property, Bills of Sale and Assignment without warranty or other covenants, duly executed by MMA or MMA Canada (as applicable), in a form reasonably satisfactory to Purchaser;
- (vi) any applicable local, state, provincial or federal transfer tax forms;
- (vii) evidence of the rejection or cancellation, pursuant to Section 365 of the Bankruptcy Code and Section 32 of the CCAA, of all Leases and Contracts between either MMA or MMA Canada (or any of their respective affiliates), on the one hand, and any third party affecting the Assets, if reasonably requested by Purchaser;
- (viii) all other documents, closing statements, affidavits, instruments and writings reasonably required to be delivered by MMA and/or MMA Canada (as applicable) at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably requested by Purchaser or any title insurer to deliver the Assets free and clear of any Liens, Claims, encumbrances or interests to the extent provided by the Bankruptcy Code and the CCAA, each in form and substance reasonably satisfactory to Purchaser and Sellers;
- (ix) all keys to the Sellers' offices and other premises and properties included in the Assets being sold to Purchaser hereunder, all computer access codes and passwords for computer programs or systems included in the Assets being sold to Purchaser hereunder, and any other

property in the possession of Sellers and being sold to Purchaser hereunder; and

(x) certificates of Sellers, executed by a duly authorized officer of each Seller, in a form reasonably satisfactory to Purchaser.

(b) Deliveries by Purchaser. At the Closing, Purchaser shall deliver or cause the delivery of the following to Sellers:

(i) the Purchase Price, in cash or by means of a completed federal funds wire transfer to an account or accounts designated by Sellers in writing not later than four (4) Business Days prior to the Closing Date;

(ii) counterparts of the instruments referred to in Section 8.3(a) that are to be executed by Purchaser; and

(iii) all other documents, closing statements, affidavits, instruments and writings reasonably required to be delivered by Purchaser or its assignee(s) at or prior to the Closing Date pursuant to this Agreement, each in form and substance reasonably satisfactory to Purchaser and Sellers.

(iv) The GST/HST and QST elections referred to in Section 5.3 hereof.

8.4 Possession. On the Closing Date, possession of the Assets shall be delivered to Purchaser.

8.5 Closing Costs. Purchaser shall pay any applicable recording fees and transfer taxes (both Sellers' and Purchaser's portions thereof) except as otherwise provided in the Sale Order and the Vesting Order. Other costs associated with the Closing and transactions contemplated under the Agreement shall be allocated as provided elsewhere in the Agreement.

8.6 Cure Costs. Except as provided in Section 2.3(a)(iii) of this Agreement, the Purchaser shall have sole responsibility for, and shall pay on or prior to the Closing Date, all costs curing defaults under the Assigned Leases and the Assigned Contracts pursuant to section 365 of the Bankruptcy Code and any applicable or analogous provision of the CCAA.

ARTICLE IX

POST-CLOSING OBLIGATIONS

9.1 Post-Closing Access and Information. Sellers acknowledge and agree that from and after the Closing Date, Purchaser will be entitled to possession of all documents, books, records, agreements, and financial data of any sort relating to the Sellers' business and the Assets, which shall be maintained at the chief executive office of Purchaser; provided, however, that Sellers, at their sole cost and expense and upon

reasonable notice to Purchaser, shall be entitled to reasonable access to, and to make copies of, such books and records as necessary for auditing, tax or litigation purposes, or in connection with any bankruptcy or similar proceedings, or to the extent they relate to assets retained by Sellers, and Purchaser shall maintain such books, records and material financial data for a period of at least three (3) years. Furthermore, Purchaser agrees that it shall give the Sellers the option of taking possession of any or all of such materials, at the end of such three-year period, to the extent that Purchaser has decided to destroy or throw away such materials. The Purchaser also agrees to make its accounting and record-keeping personnel available to the Sellers at reasonable times during normal business hours, in exchange for reimbursement of the costs associated with such employee's time, to the extent reasonably requested by Sellers in connection with their access to and use of such materials.

9.2 Litigation Support. In the event and for so long as any party actively is contesting or defending against any charge, complaint, action, suit, proceeding, hearing, investigation, Claim or demand in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or before the Closing Date involving either Sellers or Purchaser, the other party will reasonably cooperate with the contesting or defending party and its counsel in the contest or defense, make available their personnel (to the extent that such personnel's job performance is not materially affected), and provide such testimony and access to their books and records as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party, and the contesting or defending party shall reimburse the other party for its expenses of doing same.

9.3 Collection of Accounts Receivable. Except to the extent the Sellers are precluded from agreeing to the following by any provision of the Bankruptcy Code or any Order of the Bankruptcy Court:

(a) During the period from the Closing Date through the first anniversary of the Closing Date (the "Collection Period"), Purchaser shall use commercially reasonable efforts, as Sellers' agent, to collect accounts receivable from customers for freight and related charges and to process switching revenue due from other carriers (in each case relating to the sale of goods or services performed by Sellers prior to the Closing Date) in the usual and ordinary course of business and in accordance with customary practices, which may include referral to a collection agency. ISS Settlements (as defined below) shall be processed in accordance with subsection (b) below. All other accounts receivable, including but not limited to mechanical car repairs, miscellaneous receivables, claims for loss and damage and car hire relating to the period prior to the Closing Date will be collected by the Sellers. Purchaser shall make its credit, sales and other appropriate personnel available to assist Sellers in such collection efforts; provided, however, that such assistance will be provided at reasonable times and places, and shall not interfere with the ability of Purchaser's personnel to perform their regular duties. Notwithstanding the foregoing, Purchaser shall

not be required to institute legal proceedings, whether on behalf of any Seller or otherwise, to enforce the collection of any accounts receivable. Purchaser shall not adjust any accounts receivable or grant credit relating to the period prior to the Closing Date without the applicable Seller's written consent, and Purchaser shall not pledge, secure or otherwise encumber such accounts receivable or the proceeds therefrom. On or before the fifth Business Day following each of the fifteenth day and the last day of each calendar month during the Collection Period (and on or before the fifth Business Day following the end of the Collection Period), Purchaser shall remit to Sellers all amounts collected with respect to accounts receivable relating to the period prior to the Closing Date during the half-month period (or such final, shorter period at the end of the Collection Period) ended prior to such remittance date, less any collection costs incurred by Purchaser in the ordinary course with respect to the collection of those accounts receivable. On or before the fifteenth Business Day following the end of each calendar month during the Collection Period (and on or before the fifteenth Business Day following the end of the Collection Period), Purchaser shall furnish Sellers with a report of all amounts collected with respect to accounts receivable relating to the period prior to the Closing Date during the prior calendar month (or such final, shorter period at the end of the Collection Period). Sellers shall have the right, at their expense, to conduct an audit of applicable records with respect to collections and remittances under this subsection (a); provided, however, that such audit shall be conducted at reasonable times and places, and shall not interfere with the ability of Purchaser's personnel to perform their regular duties.

(b) During the period from the Closing Date through the first anniversary of the Closing Date (the "ISS Period"), Purchaser shall use commercially reasonable efforts, as Sellers' agent, to process Interline Settlement System settlements (the "ISS Settlements") relating to the period prior to the Closing Date for the accounts of and in the name of Sellers. Purchaser shall make its credit, rating, and other personnel familiar with the Interline Settlement System (the "ISS") process to accomplish such processing of settlements; provided, however, that such assistance shall be provided at reasonable times and places, and shall not interfere with the ability of Purchaser's personnel to perform their regular duties. Sellers shall be responsible for the costs of any charges for services associated with its ISS process. Notwithstanding any of the foregoing, Purchaser shall not be required to institute legal proceedings, whether on behalf of any Seller or otherwise, to enforce the collection of any ISS receivables. Purchaser shall not adjust any ISS item receivable relating to the period prior to the Closing Date resulting in a negative adjustment to the account of Sellers without the applicable Seller's written consent, and the Purchaser shall not pledge, secure or otherwise encumber any such ISS items or the proceeds therefrom. On or before the last day of each calendar month during the ISS Period, Purchaser shall notify any Seller which is a net debtor to the ISS clearing of the amount due and such Seller shall remit the amount of its debt directly to the ISS. Any Seller which is a creditor in the ISS clearing will receive funds from the ISS directly to its bank account in accordance with ISS rules and past practice. Purchaser shall furnish to Sellers all applicable accounting and reports of ISS

activity, including status reports of accounts receivable relating to the period prior to the Closing Date during the month when requested and in any event before the fifteenth Business Day following the end of each calendar month during the ISS Period (and on or before the fifteenth Business Day following the end of the ISS Period).

(c) Any payments received by Purchaser during the Collection Period from an account debtor shall be applied as specified by the account debtor. If the payment is not specific as to application, payments will be applied first against any amounts due to Purchaser in connection with a sale of goods or provision of services performed by Purchaser from and after the Closing Date, unless and to the extent that such amounts due to Purchaser are disputed by the account debtor. Purchaser shall incur no liability to any Seller for any uncollected amount. Prior to the end of the Collection Period, neither any Seller nor any agent of any Seller shall make any direct solicitation of the account debtors for payment.

(d) During the Collection Period, Sellers shall have the right to collect, at their own expense and after written notice to Purchaser, any unpaid accounts receivable that are over 120 days past due, and Purchaser shall remit to Sellers any necessary records with respect thereto at no cost to Sellers.

(e) At the end of the Collection Period, Purchaser shall return to the Sellers all files concerning the collection or attempts to collect the accounts receivable, and Purchaser's responsibility for the collection of accounts receivable shall cease. After the end of the Collection Period, Sellers shall have the right, at their own expense, to endeavor to collect unpaid accounts receivable.

ARTICLE X **TERMINATION**

10.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned, and there shall thereafter be no liability of any party to the other parties hereunder, as follows:

(a) Mutual Consent. Upon the mutual written consent of Sellers and Purchaser.

(b) By Purchaser.

(i) By Purchaser, in the event of a material violation or material breach by any Seller of its agreements, covenants, representations or warranties contained in this Agreement; provided that such violation or breach shall not have been waived or cured within ten (10) days following receipt by Sellers of written notice of such breach from Purchaser, and provided further that none of the Sellers are not then in material breach of the Agreement; or

(ii) By Purchaser, at any time after the Bid Procedures Orders are entered, if either such order is vacated, reversed or stayed, or is modified or amended in a manner materially adverse to the Purchaser; or

(iii) By Purchaser, if the Bid Procedures Orders are not entered by both the Bankruptcy Court and the Canadian Court on or before December 23, 2013; or

(iv) By Purchaser, if the Assumption, Assignment and Cure Protocol Orders are not entered by both the Bankruptcy Court and the Canadian Court on or before December 23, 2013; or

(v) By Purchaser, if the Sale Order and the Vesting Order are not entered by the Bankruptcy Court or the Canadian Court, respectively, on or before January 31, 2014; or

(vi) By Purchaser, if the Closing does not occur on or before March 14, 2014 (or on such other extended date upon which the parties mutually agree in writing); provided, however, that if all of the conditions to the Sellers' and Purchaser's respective obligations to close have been satisfied with the sole exception of the issuance of any required United States Surface Transportation Board and Canadian Transportation Agency approvals, authorizations and/or exemptions required to be obtained in connection with the consummation of the transactions contemplated by this Agreement pursuant to Sections 8.1(f) and 8.2(h) hereof, then the foregoing March 14, 2014 date shall be deemed to have been automatically extended to May 15, 2014; or

(vii) By Purchaser if, prior to the Closing, a material amount of the Assets is destroyed or substantially damaged by fire, explosion, act of God, collapse or other casualty or if condemnation proceedings are commenced against any Real Property; provided, however, that Buyer may elect to close and accept the Assets with no reduction in the Purchase Price and, in that event, any insurance proceeds (or proceeds of such condemnation proceeding) subsequently recovered by Sellers on account of such loss shall be transferred to Purchaser; or

(viii) By Purchaser, if Purchaser elects to terminate this Agreement pursuant to Section 2.3(a)(iii) of this Agreement; or

(ix) By Purchaser, if there shall occur a material adverse change in the operations, prospects or financial condition of the Sellers' businesses or the Assets after the execution of this Agreement.

(c) By Sellers.

(i) By Sellers, in the event that a higher or better offer, or an offer that is in the public interest as used in Subchapter IV of Chapter

11, from a Qualified Bidder other than Purchaser is (i) accepted by the Sellers in accordance with the Bid Procedures, (ii) approved by the Bankruptcy Court and the Canadian Court, and (iii) results in the closing of such sale, in which event this Agreement shall be deemed, without further action, to have been automatically terminated by Sellers on the date of the approval of such sale by the later of the Bankruptcy Court and the Canadian Court. In such event, the Deposit (and any interest accrued thereon) shall be returned to Purchaser in accordance with Section 2.4(b) hereof, and the Break-Up Fee and the Expense Reimbursement shall be paid in accordance with Section 5.4 hereof; or

(ii) By Sellers, in the event of a material violation or material breach by Purchaser of its agreements, covenants, representations or warranties contained in this Agreement; provided that such violation or breach shall not have been waived or cured within ten (10) days following receipt by Purchaser of written notice of such breach from Sellers, and provided further that Purchaser is not then in material breach of the Agreement; or

(iii) By Sellers, if the Closing does not occur on or before March 14, 2014 (or on such other extended date upon which the parties mutually agree); provided, however, that if all of the conditions to the Sellers' and Purchaser's respective obligations to close have been satisfied with the sole exception of the issuance of any required United States Surface Transportation Board and Canadian Transportation Agency approvals, authorizations and/or exemptions required to be obtained in connection with the consummation of the transactions contemplated by this Agreement pursuant to Sections 8.1(f) and 8.2(h) hereof, then the foregoing March 14, 2014 date shall be deemed to have been automatically extended to May 15, 2014.

(d) Effect of Termination. In the event of termination of this Agreement pursuant to this Section 10.1, written notice thereof shall forthwith be given to the other parties, and all further obligations of the parties hereunder shall immediately and without further action terminate, except that the obligations set forth in Sections 5.4 and the last sentence of this Section 10.1(d) shall survive in full force and effect, as shall any other provisions of this Agreement which are specifically designated to survive termination; provided, however, that if this Agreement is terminated by a party because of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies for breach of contract or otherwise, including, without limitation, specific performance and damages relating thereto, shall also survive such termination unimpaired. Subject to Section 5.4 hereof, but notwithstanding anything herein otherwise to the contrary, to the extent the Agreement is terminated by Purchaser for any reason, Purchaser's remedies shall be limited solely to the return of the Deposit (and any interest accrued thereon) and, if due under Section 5.4 hereof, the payment of the Break-Up Fee and Expense

Reimbursement. If this Agreement is terminated as provided herein each party will redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether obtained before or after the execution hereof to the party furnishing the same and shall abide by the terms of any confidentiality agreement relating thereto.

ARTICLE XI **MISCELLANEOUS**

11.1 Entire Agreement. This Agreement and the Schedules and Exhibits, together with the confidentiality agreement previously executed and delivered by Purchaser, contain the entire agreement among the parties with respect to the transactions contemplated by this Agreement and supersede all prior agreements or understandings among the parties.

11.2 Regulatory Approvals. No later than ten (10) Business Days after entry of the Sale Order and Vesting Order approving this Agreement, Purchaser shall file such applications, petitions or other documents as may be necessary for Purchaser to obtain any required approval or exemption from the Surface Transportation Board, Canadian Transportation Agency and/or other Governmental Authorities for the transactions contemplated by this Agreement. Purchaser shall be solely responsible for any and all costs and expenses incurred in obtaining such approvals or exemptions. Sellers shall cooperate with Purchaser in pursuing such regulatory approvals, and shall provide such information regarding MMA and/or MMA Canada and their respective rail business, and such affidavits, verified statements or oral testimony as Purchaser may require or deem appropriate, in connection with such proceedings.

11.3 Other Governmental Authorities. In the event any party receives notice from any Governmental Authority that other notices, applications, filings or Governmental Permits are required with respect to this Agreement or the transactions contemplated hereby, Purchaser and Sellers (as applicable) shall make such notices, applications or filings and seek such Governmental Permits, unless they decide, in good faith, that such compliance is not necessary.

11.4 Additional Actions and Documents. At and after the Closing, and without further consideration, Purchaser and/or Sellers (as applicable) will promptly execute and deliver such further instruments of conveyance, assignment and transfer, and take such other actions as any party may reasonably request in order to convey, assign and transfer to Purchaser all of Sellers' rights, title and interest in and to the Assets, or to clarify, identify or more precisely describe the Assets intended to be conveyed.

11.5 Entire Agreement. This Agreement and the Schedules and Exhibits, together with the confidentiality agreement previously executed and delivered by an affiliate of Purchaser, contain the entire agreement among the parties with respect to the transactions contemplated by this Agreement and supersede all prior discussions, agreements or understandings among the parties with respect to the subject matter hereof and this Agreement.

11.6 Descriptive Headings; Certain Interpretations.

(a) Section headings are descriptive and for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

(b) Except as otherwise expressly provided in this Agreement, the following rules of interpretation apply to this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) “or” and “either” are not exclusive and “include” and “including” is not limiting; (iii) a reference to any agreement or other contract includes any schedules and exhibits thereto and permitted supplements and amendments thereof; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder; (v) a reference to the Bankruptcy Code includes references to any analogous or applicable provisions of the CCAA or similar Canadian law; (vi) a reference to a person includes a natural person or entity and its permitted successors and assigns; and (vii) a reference in this Agreement to an Article, Section, Exhibit or Schedule is to the Article, Section, Exhibit or Schedule of this Agreement.

11.7 Successors and Assigns. This Agreement is made solely and specifically by and for the benefit of the parties hereto, and their respective successors and assigns. Purchaser shall be entitled to assign its rights hereunder to one or more affiliates or one or more entities related to Purchaser; provided, however, that such assignment shall not relieve Purchaser of its obligations hereunder.

11.8 Notices. All notices, requests, and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or mailed (postage prepaid by certified or registered U.S. mail, return receipt requested) or by overnight courier to the parties at the following addresses, e-mail addresses, or facsimile numbers:

If to Sellers, addressed to:

Robert J. Keach, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
100 Middle Street
Portland, ME 04104-5029
(207) 774-1127

Joseph McGonigle
Montreal Maine & Atlantic Railway
15 Iron Road
Hermon, ME 04401

Patrice Benoit
Gowling Lafleur Henderson LLP
3700-1 Place Ville Marie
Montreal, Québec H3B 3P4
Canada

With copies (which shall not constitute notice hereunder) to:

Andrew Adessky, Monitor
Richter Advisory Group, Inc.
1981 McGill College Avenue, 12th Floor
Montreal, Québec H3A 0G6
Canada

Sylvain Vauclair, Counsel to the Monitor
Woods LLP
2000 McGill College Ave., Suite 1700
Montreal, Québec H3A 3H3
Canada

Peter S. Kaufman
Thomas McCarthy
Gordian Group
950 Third Avenue, 17th Floor
New York, NY 10022

If to Purchaser, addressed to:

Ken Nicholson
Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105

With copies to:

Joseph Adams
Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, NY 10105

and

Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

All such Notices will (a) if delivered personally to the address as provided in this Section 11.8, be deemed given upon delivery; (b) if delivered by mail in the manner described above to the address as provided in this Section 11.8, be deemed given three Business Days after mailing; (c) if delivered by overnight courier service to the address as provided in this Section 11.8 be deemed given one Business Days after deposit with the courier (in each case regardless of whether such notice, request, or other communication is received by any other Person to whom a copy of such notice, request, or other communication is to be delivered pursuant to this Section). Any party from time to time may change its address or other information for the purpose of notices to that party by giving notice specifying the change to the other parties.

11.9 Expenses. Except as otherwise expressly provided herein (including Sections 5.4 and 10.1(d)), each party shall bear its own costs with respect to the drafting and negotiation of this Agreement, any court or regulatory proceedings related thereto, the consummation of the transactions contemplated hereby, and such party's compliance with all its agreements and conditions contained herein, including without limitation all legal and accounting fees and disbursements and all costs of obtaining necessary consents. The provisions of this Section 11.9 shall survive the Closing or earlier termination of this Agreement.

11.10 Brokerage Commissions and Fees. Purchaser warrants and represents that no brokerage commissions or fees are due any broker as a result of Purchaser's actions in connection with the transactions contemplated in this Agreement; and Purchaser agrees that should any claim be made for commissions or fees by any broker against Sellers, Purchaser will indemnify and hold Sellers harmless from and against any and all such claims in connection therewith. Sellers warrant and represent that no brokerage commissions or fees are due to any brokers (a) under any of the Assigned Leases or (b) as a result of any Seller's actions in connection with the transactions contemplated in this Agreement, other than amounts due to Gordian Group, the Sellers' investment banker; and each Seller agrees that Sellers shall indemnify and hold Purchaser harmless from and against any and all such claims in connection therewith (including without limitation any claim for compensation due to Gordian Group). Notwithstanding anything contained herein to the contrary, the provisions of this Section 11.10 shall survive the Closing or any earlier termination of this Agreement.

11.11 Waiver. Any term, provision or condition of this Agreement may be waived, or the time for its performance may be extended, at any time by the party which is entitled to the benefit thereof. To be effective, each such waiver shall be in writing, shall specifically refer to this Agreement and the term, provision or condition being waived, and shall be executed by an authorized officer of the party granting such waiver. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor to affect in any way the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. Notwithstanding the foregoing, a waiver hereunder by the Sellers of any material term or condition shall not be effective without an order of the Bankruptcy Court in relation to such waiver.

11.12 Amendment. This Agreement may be modified or amended only in a writing duly executed by or on behalf of all parties hereto.

11.13 Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile.

11.14 Continuing Jurisdiction. The parties agree that the Bankruptcy Court and Canadian Court shall retain jurisdiction over the enforcement of this Agreement, including the performance of the obligations and transactions contemplated hereunder.

11.15 Choice of Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Maine (as relates to the MMA Assets) and in accordance with the laws of the Province of Québec (as relates to the MMA Canada Assets), without regard to conflicts of laws principles thereof, except with respect to matters of law concerning the internal corporate affairs of any corporation, company or limited liability company that is a party to or the subject of this Agreement, and as to those matters the law of the jurisdiction of incorporation or organization of such entity shall govern.

11.16 No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed to create a partnership, joint venture, or any other relationship other than that of seller and purchaser between the parties hereto.

11.17 No Third-Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto and their successors and permitted assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any party hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and permitted assigns.

11.18 Exhibits and Schedules. To the extent that any Exhibit or Schedule to this Agreement is not attached or identified as “[TO COME]”, Sellers and Purchaser agree to negotiate in good faith with the other regarding the terms and/or content of any such Exhibit or Schedule to complete such Exhibit or Schedule prior to the Closing, and will amend this Agreement to include such Exhibit or Schedule when the same has been finalized.

11.19 English Language. This Agreement and all related documents have been drawn up in English at the express wish of the parties hereto. La présente entente et tous les documents s’y rattachent sont rédigés en anglais selon la volonté expresse des parties aux présentes.

11.20 Prevailing Agreement Between the Parties. In the event of any conflict between the provisions of this Agreement and the provisions of any other transaction document, other than the Sale Order or the Vesting Order, the provisions of this Agreement shall prevail in the determination of the respective rights and obligations of the parties as between themselves. In the event of any conflict between any provision of this Agreement (or any other transaction document) and either the Sale Order or the Vesting Order, the terms of the Sale Order and/or the Vesting Order shall govern.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be
duly authorized, executed and delivered.

Montreal Maine & Atlantic Railway, Ltd.

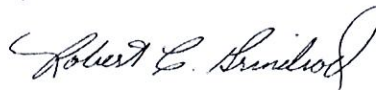
By: 

Name: Robert J. Keach

Title: Chapter 11 Trustee, and solely in
such capacity

Montreal Maine & Atlantic Canada Co.

By:



Name: ROBERT C. GAINDROP

Title: ITS DULY AUTHORIZED OFFICER

Railroad Acquisition Holdings LLC

By: 

Name:

Title:

Schedules and Exhibits

Exhibit A	MMA Lines
Exhibit B	MMA Canada Lines
Schedule 2.1(a)(iii)	MMA Rolling Stock and Motor Vehicles
Schedule 2.1(a)(iv)	MMA Operating Agreements
Schedule 2.1(a)(v)	MMA Assigned Contracts
Schedule 2.1(a)(vi)	MMA Assigned Leases
Schedule 2.1(a)(viii)	Selected MMA Deposits/Prepayments
Schedule 2.1(a)(xv)	MMA Assigned Causes of Action
Schedule 2.1(b)(iii)	MMA Canada Rolling Stock and Motor Vehicles
Schedule 2.1(b)(iv)	MMA Canada Operating Agreements
Schedule 2.1(b)(v)	MMA Canada Assigned Contracts
Schedule 2.1(b)(vi)	MMA Canada Assigned Leases
Schedule 2.1(b)(viii)	Selected MMA Canada Deposits/Prepayments
Schedule 2.1(b)(xv)	MMA Canada Assigned Causes of Action
Schedule 2.2(e)	Assumed Employee Agreements/Plans
Schedule 2.7	Allocation of Purchase Price
Schedule 3.5	Real Property
Schedule 3.5(a)	Track Reconstruction
Schedule 3.7	Litigation
Schedule 3.8A	Contracts
Schedule 3.8B	Leases
Schedule 3.9	Material Adverse Changes
Schedule 3.10	Employees

DRAFT FORM OF ORDER

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER AUTHORIZING CHAPTER 11 TRUSTEE TO SELL SUBSTANTIALLY ALL
OF THE DEBTOR'S ASSETS AND TO ASSUME AND ASSIGN CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES¹**

This matter having come before the Court on the *Motion for Authority to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases* (the "Sale Motion"), filed by Robert J. Keach, the chapter 11 trustee (the "Trustee") in the above-captioned case of Montreal, Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), and this Court finding that all interested parties were provided with such notice and opportunity for hearing with respect to the Sale Motion and the Asset Purchase Agreement entered into between the Debtor and Railroad Acquisition Holdings LLC (the "Purchaser") as of December 12, 2013 (the "Agreement") as was required by the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Rules"), and this Court's local rules, this Court having conducted a hearing on the Sale Motion (the "Sale Hearing"), this Court having considered the testimony and documents admitted in evidence at the Sale Hearing, the offers of proof (to the extent consented to by the parties), stipulations of the parties

¹ This form of order is a draft, which remains subject to review, negotiation and approval by the Stalking Horse in accordance with the terms of the Stalking Horse APA.

and the arguments of counsel, good cause otherwise having been shown for the relief requested and any objections having been withdrawn or considered and overruled; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and upon the record of the Sale Hearing and this bankruptcy case; and after due deliberation thereon;

NOW, upon the Sale Motion, the exhibits annexed thereto, the evidence admitted at the Sale Hearing and the arguments of counsel advanced at the Sale Hearing, and all prior pleadings and proceedings made herein,

THE COURT HEREBY FINDS THAT:²

A. This Court, pursuant to 28 U.S.C. §§ 157 and 1334, has exclusive jurisdiction over all assets of the Debtor and its chapter 11 estate, including, without limitation, the Assigned Contracts and Leases. Without limiting the generality of the foregoing, this Court has exclusive *in rem* jurisdiction over the Assets pursuant to 28 U.S.C. § 1334(e), as such assets are property of the Debtor's chapter 11 estate, and, as a result of such jurisdiction, the Court has all necessary power and authority to grant the relief contained herein. The Sale Motion is a core proceeding as defined in 28 U.S.C. § 157(b). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The predicates for the relief sought in the Sale Motion are sections 105(a), 363(b), (f), (k), (m), and (n), and 365 of the Bankruptcy Code, and Rules 2002, 6004, 6006 and 9014.

C. As evidenced by the certificates of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, and the Sale has been provided in

² Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Sale Motion.

accordance with 11 U.S.C. §§ 105(a), 363 and 365, and Rules 2002, 6004, 6006 and 9014, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, or the Sale is or shall be required. Without limiting the generality of the foregoing, the Trustee has given due and proper notice of the proposed sale of Assets, and the assignment and transfer of the Assigned Contracts and Leases, to all parties required to receive notice.

D. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Trustee and his advisers have diligently and in good faith marketed the Assets to secure the highest and best offer or offers therefor. The consideration to be paid to the Debtor by the Purchaser pursuant to the Agreement, and the transactions contemplated thereby, represents a fair and reasonable purchase price and constitutes the highest and best offer obtainable for the Assets.

E. The Trustee has demonstrated good, sufficient, and sound business purpose and justification, and compelling circumstances for the assumption and assignment, sale, and transfer of the Assets pursuant to sections 105, 363, and 365 of the Bankruptcy Code prior to confirmation of a plan pursuant to section 1129 of the Bankruptcy Code.

F. The Trustee has full power and authority, pursuant to 11 U.S.C. § 1163 and the *United States Trustee's Certificate of Appointment of Trustee Pursuant to 11 U.S.C. § 1163* [Docket No. 64], to execute the Agreement and all other documents contemplated thereby, and needs no further consents or approvals, other than those expressly provided for in the Agreement, to consummate such transactions.

G. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, and the rights of third parties to submit higher or otherwise

better offers for the Assets, has been afforded to all interested parties and entities, including: (i) the Office of the United States Trustee; (ii) counsel for the Purchaser; (iii) all entities (or counsel therefor) known to have asserted any liens, claims, causes of action, encumbrances, rights of refusal, security interests, pledges, judgments, demands, charges, defects, options, restrictions, and other interests of any kind whatsoever (collectively “Encumbrances” and each an “Encumbrance”) in or upon the Assets, including without limitation the Federal Railroad Administration, Wheeling & Lake Erie Railway Company, the Maine Department of Transportation, Bangor Savings Bank, and Camden National Bank; (iv) all federal, state and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Sale Motion; (v) all parties known to have expressed a bona fide interest in acquiring the Assets (or any of them); (vi) the United States Attorney’s office; (vii) the Internal Revenue Service; (viii) all entities who have filed a notice of appearance and request for service of papers in these cases; and (ix) all other known creditors of the Debtor.

H. The Purchaser is acting, with respect to the Agreement, the transactions contemplated thereby, and this Sale Order, as a good faith purchaser, as that term is used in the Bankruptcy Code and is, accordingly, entitled to the protections set forth in section 363(m) of the Bankruptcy Code. Purchaser will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by this Agreement at all times after the entry of this Sale Order.

I. The conditions of section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied with respect to any and all persons or entities asserting any Encumbrance in or upon the Assets because: (i) applicable non-bankruptcy law permits sale of such property free and

clear of such Encumbrance; (ii) such person or entity has consented to the sale and transfer, license and assignment as applicable, free and clear of its Encumbrances, with each such Encumbrance to attach to the proceeds of such sale and transfer, license and assignment, as applicable; (iii) such Encumbrance is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such Encumbrance is in bona fide dispute; or (v) such person or entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance.

J. The sale of the Assets, and the assumption and assignment of the Assigned Contracts and Leases, in accordance with the terms of the Agreement is in the best interests of the Debtor and its chapter 11 estate.

K. The immediate sale and transfer of the Assets, and the assumption and immediate sale, transfer and assignment of the Assigned Contracts and Leases to the Purchaser is subject to all the provisions of the Agreement. Assignment of the Assigned Contracts and Leases to Purchaser will be a legal, valid and effective assignment of such Assigned Contracts and Leases, and will vest Purchaser with all right and interest of the Debtor to such Assigned Contracts and Leases free and clear of all Encumbrances from and after the Closing.

L. Under all the circumstances presented, (i) approval and execution of the Agreement, and all other actions contemplated therein; (ii) consummation of all acts contemplated in this Order; (iii) the sale, assignment and transfer of the Assets, including the Assigned Contracts and Leases, by the Trustee to the Purchaser; and (iv) the receipt by the Trustee of the Purchase Price are in the best interests of the Debtor and its estate, creditors, and other parties in interest.

M. Proper, sufficient, and sound business reasons and other good cause for the entry of this Sale Order have been shown. The consideration provided by Purchaser for the Assets pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

N. The provisions of sections 363(b), 363(f), 363(m), and 365 of the Bankruptcy Code have been complied with, and are applicable to the sale, assignment, and transfer of the Assets by the Trustee to the Purchaser. The Trustee may sell the Assets free and clear of all Encumbrances because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections of 11 U.S.C. § 363(f) and are adequately protected by having their Encumbrances, if any, attach to the cash proceeds of the Sale.

O. The Sale must be approved promptly in order to preserve the value of the Assets.

P. The Agreement was negotiated, proposed, and entered into by the Trustee and Purchaser without collusion, in good faith, at arm's length. Neither the Trustee, nor the Debtor or the Purchaser, has engaged in any conduct that would cause or permit the Agreement to be avoided or avoidable under 11 U.S.C. § 363(n). The Purchaser is not an "insider" or "affiliate" of the Debtor or the Trustee (as such terms are defined in the Bankruptcy Code).

Q. The Purchaser is as creditworthy and otherwise as capable of performing under the Assigned Contracts and Leases as the Debtor was at the time the Debtor entered into the Assigned Contracts and Leases. As of the Closing under the Agreement, the Purchaser will have provided each of the counterparties to the Assigned Contracts and Leases with adequate assurance of future performance, as required by 11 U.S.C. §§ 365(b)(1) and (f)(2). Each of the Assigned Contracts and Leases shall be valid, binding and enforceable by the Purchaser against the counterparties to the Assigned Contracts and Leases, as applicable. No uncured default exists under the Assigned Contracts and Leases, nor is there any existing events or conditions which, with the passage of time or the giving of notice, or both, would constitute such a default. Because the Purchaser will, as of the Closing, have provided adequate assurance of the Purchaser's future performance under Assigned Contracts and Leases, the failure (if any) by any counterparty to the Assigned Contracts and Leases to provide their consent to the Trustee's assignment, sale, and transfer of the Assigned Contracts and Leases to the Purchaser and/or to the assignment, encumbrance or pledge by Purchaser of all its right, title and interest upon Closing in, to and under the Assigned Contracts and Leases as security for any financing or other financial arrangement Purchaser may secure or to the lenders in such financing or their trustee, designee or assignee obtaining title to the Assigned Contracts and Leases or any of them upon an exercise of remedies or a consensual transfer thereof in lieu of an exercise of remedies would be unreasonable and, therefore, such failure would be a material breach of the terms of the Assigned Contracts and Leases. In any event, such consent is not required and/or is deemed granted under the circumstances presented here.

R. Purchaser would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its estate, and its

creditors, if the sale of the Assets to Purchaser were not free and clear of all Encumbrances, or if Purchaser would, or in the future could, be liable for any of the Encumbrances.

S. The assignment of the Assigned Contracts and Leases to Purchaser will not subject Purchaser to any liability whatsoever with respect to the operation of the Debtor's business or by reason of such assignment based on any theory of antitrust or successor or transferee liability.

T. Cause exists to waive and/or vacate the stays imposed by Rules 6004(h) and 6006(d), and such stays are hereby vacated and shall have no application to the relief afforded by this Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Motion is hereby granted in all respects. The Agreement is approved in all respects. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled on the merits.

2. Pursuant to 11 U.S.C. §§ 363(b), 365 and 1163, the Trustee is hereby authorized and empowered, and, upon entry of this Order, has all the power and authority necessary to:

- a. Fully perform under, consummate, implement, execute and deliver the Agreement and all other documents contemplated thereby, to consummate the transactions contemplated by the Agreement, and to take all other actions required to be taken pursuant to the Agreement.
- b. Sell and transfer the Assets, and assume, sell, transfer, and assign the Assigned Contracts and Leases, to the Purchaser, effective upon the Closing and upon the terms and conditions set forth in the Agreement, and to take any action reasonably necessary to effectuate the sale, transfer, and assignment of the Assets and the Assigned Contracts and Leases to the Purchaser.

- c. Receive the consideration described in the Agreement from the Purchaser and take any action necessary to effectuate the receipt of such consideration; and
- d. Fully perform and take all action necessary to effectuate the Agreement, the transactions contemplated thereby, and the obligations contemplated by this Order.

3. No other or further consents or approvals of this Court are required for the Trustee to consummate or effectuate (i) the Agreement, (ii) the sale and transfer of the Assets to the Purchaser; (iii) the assumption and sale, transfer, and assignment of the Assigned Contracts and Leases to the Purchaser, and (iv) the receipt of consideration from the Purchaser.

4. Pursuant to 11 U.S.C. §§ 105(a), 363(b), 363(f) and 365, the Assigned Contracts and Leases shall be assumed, assigned and transferred by the Trustee to the Purchaser, and, upon the Closing under the Agreement, the Assigned Contracts and Leases shall be free and clear of all Encumbrances, or interests, including, without limitation, all claims, if any, arising from the operation or cessation of the Debtor's business, whether arising prior to or subsequent to the commencement of Debtor's case under chapter 11 of the Bankruptcy Code, and whether imposed by agreement, understanding, law, equity or otherwise (except as otherwise provided in the Agreement or this Order), which liens, claims, encumbrances and/or interests, if any, shall attach to the proceeds of the sale.

5. Effective upon the Closing, all persons and entities, including but not limited to all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding Encumbrances against or in the Debtor, the Assets, or the Assigned Contracts and Leases (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Debtor's

business or the assignment of the Assigned Contracts and Leases to Purchaser, hereby are forever barred, estopped and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding, against the Purchaser or its successors or assigns with respect to any Encumbrance. Without limiting the generality of the foregoing, the Purchaser shall have no liability for any claim (as defined in Bankruptcy Code § 101(5)) against the Debtor or the Trustee.

6. The consummation of the Agreement shall not subject the Purchaser to any liability whatsoever with respect to the pre-petition operation of the business of the Debtor or the post-petition operation of the business of the Debtor, including, without limitation, by reason of any theory of successor or transferee liability or pursuant to any labor agreements covering the current or former employees of the Debtor. Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Assigned Contracts and Leases. Without limiting the generality of the foregoing, Purchaser shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, and Purchaser shall not have any successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtor's business.

7. If any person or entity that has filed a financing statement or other documents or agreements evidencing Encumbrances in or upon the Assets shall not have delivered, in proper form for filing, termination statements, instruments of satisfaction, releases and other documents to the Trustee prior to Closing, then the Trustee shall be and hereby is authorized to execute such

termination statements, instruments of satisfaction, releases and other documents on behalf of the person or entity and to file the same with any appropriate registry or public filing office. Notwithstanding the foregoing, the provisions of this Sale Order shall be self-executing, and notwithstanding the failure of the Purchaser, the Trustee or any other party to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or the Agreement with respect to the sale of the Assets, all Encumbrances on the Assets shall be and hereby are deemed to be divested, terminated and discharged.

8. The Assigned Contracts and Leases shall, upon assumption and assignment to the Purchaser, be valid and binding and in full force and effect and enforceable by the Purchaser in accordance with their respective terms. This Order shall be fully binding upon all counterparties to the Assigned Contracts and Leases, and such counterparties shall timely and completely perform all of their obligations under the Assigned Contracts and Leases in the absence of a payment default thereunder, including but not limited to consenting to and abiding by: (i) the Trustee's assignment of the Assigned Contracts and Leases to the Purchaser; and (ii) the assignment, encumbrance or pledge by Purchaser of all its right, title and interest upon Closing in, to and under the Assigned Contracts and Leases as security for any financing or other financial arrangement Purchaser may secure, or to the lenders in such financing or their trustee, designee or assignee obtaining title to the Assigned Contracts and Leases or any of them upon an exercise of remedies or a consensual transfer thereof in lieu of an exercise of remedies. To the extent not timely given, the consent of the counterparties to each of the Assigned Contracts and Leases is hereby deemed granted. Pursuant to section 365(k) of the Bankruptcy Code, the Trustee and the Debtor shall be relieved, from the date of its assignment, from any further liability with respect to

the Assigned Contracts and Leases. The Purchaser shall not, as a result of such assignment, assume any liability under the Assigned Contracts and Leases for events occurring prior thereto.

9. The Trustee is hereby authorized and empowered, and, upon entry of the Order, shall have all the authority necessary, to perform such ministerial acts as may be required to effectuate and implement the Agreement and any transaction contemplated thereby.

10. All of the transactions and actions contemplated by this Order are properly authorized under sections 363 and 365 of the Bankruptcy Code.

11. The consideration provided by the Purchaser for the Assets under the Agreement is fair and reasonable, and the result of open and competitive bidding, and may not be avoided under section 363(n) of the Bankruptcy Code. The consideration provided by Purchaser for the Assets under the Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

12. This Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and any agreements executed in connections therewith in all respects, including but not limited to, retaining jurisdiction (a) to resolve any disputes arising under or related to the Agreement, except as otherwise provided therein; and (b) to interpret, implement, and enforce the provisions of this Order.

13. The transactions contemplated by the Agreement are undertaken by Purchaser, in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale to the Purchaser, unless such authorization is duly stayed

pending such appeal. Purchaser is a good-faith purchaser, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

14. The terms and provisions of the Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of the Trustee, the Debtor, and its affiliates, and the successors and assigns of each of the foregoing, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any Chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

15. The failure specifically to include or refer to any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Agreement be authorized and approved in its entirety.

16. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by the Trustee and the Purchaser, and in accordance with the terms of the Agreement, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the estate of the Debtor.

17. The automatic stay provisions of section 362 of the Bankruptcy Code are lifted and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order.

18. The provisions of Rules 6004(h) and 6006(d) staying the effectiveness of this Order for fourteen days are hereby waived, and this Sale Order shall be effective and the parties may consummate the transactions contemplated by the Agreement immediately upon entry.

19. Nothing contained in any plan of reorganization or liquidation confirmed in this case or the order confirming any plan of reorganization or liquidation shall conflict with or

derogate from the provisions of this Sale Order. The provisions of this Sale Order, and any actions taken pursuant hereto, shall survive the entry of an order which may be entered confirming any plan of reorganization or liquidation of the Debtor.

20. The sale and transfer of the Assets, and the sale, transfer and assignment of the Assigned Contracts and Leases, pursuant to the Agreement, to the extent the Assets are owned by MMA, are transfers pursuant to 36 M.R.S.A. § 4641-C(14), and accordingly shall not be taxed under and shall be exempt from any law imposing a stamp tax or a sale, transfer, or any other similar or related tax assessed or imposed by any government entity or unit, including without limitation the State of Maine and any local taxing authority.

21. This Court shall retain jurisdiction over the parties to the Agreement with respect to any matters related to or arising under the Agreement or under this Order.

22. This Sale Order shall be effective as a determination that, on the Closing Date, all Encumbrances existing in the Assets have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected.

23. Under no circumstances shall Purchaser be deemed a successor of or to the Debtor for any Encumbrance against or in the Debtor, the Assets, or the Assigned Contracts and Leases of any kind or nature whatsoever. The sale of the Assets and the sale and assignment of the Assigned Contracts and Leases shall not be subject to any Encumbrances, and Encumbrances of any kind or nature whatsoever shall remain with, and continue to be obligations of the Debtor. All persons holding Encumbrances against or in the Debtor, the Assets, or the Assigned Contracts and Leases of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Encumbrances against Purchaser, its successors and assigns, its properties, the Assets, or the Assigned Contracts

and Leases with respect to any Encumbrances of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, its estates, officers, directors, shareholders, the Assets or the Assigned Contracts and Leases. Following the Closing Date no holder of any Encumbrances in the Assets or the Assigned Contracts and Leases shall interfere with Purchaser's use and enjoyment of the Assets or the Assigned Contracts and Leases based on or related to such Encumbrance, or any actions that the Trustee may take in this case.

25. The provisions of this Sale Order are nonseverable and mutually dependent.

Dated:

Honorable Louis H. Kornreich
United States Bankruptcy Judge