

**UNITED STATES  
DEPARTMENT OF TRANSPORTATION**

**RRIF LOAN AGREEMENT**

**For Up to \$31,379,805**

**With**

**SIERRA NORTHERN RAILWAY**

**And**

**MENDOCINO RAILWAY, as Borrowers**

**For**

**SIERRA RAILWAY COMPANIES PROJECT  
(RRIF No. 2024-0049)**

**Dated as of January 11, 2024**

# TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I TERMS .....	1
Section 1.1 ..... Definitions.....	1
Section 1.2 ..... Interpretation.....	22
ARTICLE II ISSUANCE OF DEBT .....	23
Section 2.1 ..... RRIF Loan Amount .....	23
Section 2.2 ..... Disbursement Conditions.....	23
Section 2.3 ..... Term.....	24
Section 2.4 ..... Interest Rate .....	24
Section 2.5 ..... Outstanding RRIF Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule.....	25
Section 2.6 ..... Payment of Principal and Interest.....	25
Section 2.7 ..... Prepayment .....	26
ARTICLE III CONDITIONS TO LENDING .....	28
Section 3.1 ..... Conditions Precedent to Effectiveness.....	28
Section 3.2 ..... Conditions Precedent to All Disbursements .....	31
ARTICLE IV REPRESENTATIONS AND WARRANTIES.....	32
Section 4.1 ..... Organization; Power and Authority .....	32
Section 4.2 ..... Officers' Authorization.....	32
Section 4.3 ..... Due Execution; Enforceability.....	32
Section 4.4 ..... Non-Contravention .....	32
Section 4.5 ..... Consents and Approvals .....	33
Section 4.6 ..... Litigation.....	33
Section 4.7 ..... Reserved.....	33
Section 4.8 ..... No Debarment.....	33
Section 4.9 ..... Accuracy of Representations and Warranties.....	34
Section 4.10 ... Compliance with Federal Requirements.....	34
Section 4.11 ... No Defaults .....	34
Section 4.12 ... Governmental Approvals.....	34
Section 4.13 ... Construction-Related Contracts .....	34
Section 4.14 ... Information .....	35
Section 4.15 ... OFAC; Anti-Corruption Laws .....	35
Section 4.16 ... Compliance with Law .....	35
Section 4.17 ... Environmental Matters.....	36
Section 4.18 ... Sufficient Rights and Utilities.....	36
Section 4.19 ... Insurance .....	36
Section 4.20 ... Title.....	36
Section 4.21 ... Indebtedness and Liens .....	36
Section 4.22 ... Investment Company Act .....	37
Section 4.23 ... Financial Statements .....	37
Section 4.24 ... Taxes .....	37
Section 4.25 ... ERISA .....	37
Section 4.26 ... Sufficient Funds.....	38
Section 4.27 ... Class III Railroad Status .....	38
Section 4.28 ... Patriot Act.....	38

**TABLE OF CONTENTS**  
**(continued)**

	<u>Page</u>
Section 4.29 ... Solvency.....	38
Section 4.30 ... No Bankruptcy of Current Officers and Directors; No Felony Conviction or Securities Law Violation .....	39
Section 4.31 ... Economic and Efficient Use .....	39
ARTICLE V REPORTING.....	39
Section 5.1 ..... Financial Statements .....	39
Section 5.2 ..... Notice of Certain Events; Other Information.....	41
Section 5.3 ..... Remedial Action .....	42
Section 5.4 ..... Accounting and Audit Procedures; Inspections; Report and Records .....	43
Section 5.5 ..... Financial Reporting.....	44
ARTICLE VI AFFIRMATIVE COVENANTS.....	44
Section 6.1 ..... Copies of Documents .....	44
Section 6.2 ..... Use of Proceeds.....	45
Section 6.3 ..... Reserved.....	45
Section 6.4 ..... Prosecution of Work; Verification Requirements.....	45
Section 6.5 ..... Operations and Maintenance.....	45
Section 6.6 ..... Insurance .....	46
Section 6.7 ..... Maintain Legal Status .....	47
Section 6.8 ..... Reserved.....	47
Section 6.9 ..... Compliance with Law .....	47
Section 6.10 ... Material Obligations; Liens .....	47
Section 6.11 ... Environmental Matters.....	47
Section 6.12 ... SAM Registration .....	47
Section 6.13 ... Events of Loss; Loss Proceeds.....	47
Section 6.14 ... Reserved.....	48
Section 6.15 ... Cargo Preference Act.....	48
Section 6.16 ... Lobbying.....	48
Section 6.17 ... Further Assurances; Most Favored Nations.....	48
Section 6.18 ... Reserved.....	49
Section 6.19 ... Small and Disadvantaged Businesses .....	49
Section 6.20 ... Reserved.....	49
Section 6.21 ... Projected Substantial Completion Date .....	49
Section 6.22 ... Employee Protection.....	49
Section 6.23 ... Domestic Buying Preference .....	50
Section 6.24 ... Buy America .....	50
ARTICLE VII NEGATIVE COVENANTS.....	50
Section 7.1 ..... Indebtedness.....	50
Section 7.2 ..... No Lien Extinguishment or Adverse Amendments .....	51
Section 7.3 ..... No Prohibited Liens .....	51
Section 7.4 ..... Merger, Dissolution or Sale of Assets .....	51
Section 7.5 ..... Restricted Payments; Payments of Indebtedness.....	52
Section 7.6 ..... Investments .....	54
Section 7.7 ..... Transactions with Affiliates.....	55
Section 7.8 ..... Restrictive Agreements.....	55

**TABLE OF CONTENTS**  
**(continued)**

	<u>Page</u>
Section 7.9 ..... Conduct of Business; Deployment of Assets.....	55
Section 7.10 ... Reserved.....	56
Section 7.11 ... Reserved.....	56
Section 7.12 ... No Prohibited Sale, Lease or Assignment .....	56
Section 7.13 ... Organizational Documents; Fiscal Year .....	56
Section 7.14 ... Reserved.....	56
Section 7.15 ... No Payment with Federal Funds.....	56
Section 7.16 ... Change in Legal Structure; Mergers and Acquisitions .....	56
Section 7.17 ... OFAC Compliance.....	57
Section 7.18 ... Hedging.....	57
Section 7.19 ... Discontinuance or Abandonment of Business .....	57
Section 7.20 ... Abandonment of Rail Line or Operation .....	57
Section 7.21 ... Salaries of Officers .....	57
Section 7.22 ... ERISA Compliance.....	58
Section 7.23 ... Prohibited Interest.....	58
<b>ARTICLE VIII INDEMNIFICATION .....</b>	<b>59</b>
Section 8.1 ..... Indemnification.....	59
<b>ARTICLE IX EVENTS OF DEFAULT AND REMEDIES .....</b>	<b>60</b>
Section 9.1 ..... Events of Default .....	60
Section 9.2 ..... Remedies.....	63
<b>ARTICLE X ASSIGNMENT .....</b>	<b>64</b>
Section 10.1 ... Sale of RRIF Loan .....	64
<b>ARTICLE XI MISCELLANEOUS .....</b>	<b>64</b>
Section 11.1 ... No Personal Recourse.....	64
Section 11.2 ... No Third Party Rights.....	64
Section 11.3 ... Borrowers' Authorized Representative.....	65
Section 11.4 ... RRIF Lender's Authorized Representative.....	65
Section 11.5 ... Servicer .....	65
Section 11.6 ... Fees and Expenses .....	66
Section 11.7 ... Amendments and Waivers .....	66
Section 11.8 ... Governing Law and Venue .....	66
Section 11.9 ... Severability .....	67
Section 11.10. Successors and Assigns.....	67
Section 11.11. Counterparts; Electronic Signatures .....	67
Section 11.12. Notices; Payment Instructions .....	67
Section 11.13. Effectiveness .....	68
Section 11.14. Termination.....	68
Section 11.15. Integration .....	69
Section 11.16. Joint and Several Liability .....	69

Document received by the CA 1st District Court of Appeal.

**TABLE OF CONTENTS**  
**(continued)**

**Page**

<b>SCHEDULE I</b> – Project Budget	
<b>SCHEDULE II</b> – Construction Schedule	
<b>SCHEDULE 2.7(a)(iv)</b> – Financial Covenant Prepayment Schedule	
<b>SCHEDULE 4.6</b> – Litigation	
<b>SCHEDULE 4.21</b> – Existing Indebtedness and Liens	
<b>SCHEDULE 7.6</b> – Existing Investments	
<b>EXHIBIT A</b> – Form of RRIF Note	
<b>EXHIBIT B</b> – Anticipated RRIF Loan Disbursement Schedule	
<b>EXHIBIT C</b> – Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions	
<b>EXHIBIT D</b> – Requisition Procedures	
<b>EXHIBIT E</b> – Compliance with Laws	
<b>EXHIBIT F</b> – RRIF Debt Service	
<b>EXHIBIT G</b> – Opinions Required of Counsel to the Borrowers	
<b>EXHIBIT H</b> – Form of the Borrowers’ Officer’s Certificate	
<b>EXHIBIT I</b> – Form of Certificate of Substantial Completion	
<b>EXHIBIT J</b> – Certification Regarding the Prohibition on the Use of Appropriated Funds for Lobbying	
<b>EXHIBIT K</b> – U.S. Secretary of Labor Prescribed Employment Arrangements	
<b>EXHIBIT L</b> – Reporting Subawards and Executive Compensation	
<b>EXHIBIT M</b> – Definition of Project	

Document received by the CA 1st District Court of Appeal.

## RRIF LOAN AGREEMENT

**THIS RRIF LOAN AGREEMENT** (this “**Agreement**”), dated as of January 11, 2024, is by and among Mendocino Railway, a corporation created under the laws of California, with an address of 100 West Laurel Street Fort Bragg, California 95437 (“**Mendocino**”) and Sierra Northern Railway, a corporation created under the laws of California, with an address of 1745 Enterprise Blvd., West Sacramento, California 95691 (“**SNR**” and together with Mendocino, the “**Borrowers**” and each a “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION** (“**USDOT**”), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**RRIF Lender**”).

### RECITALS:

WHEREAS, the Secretary of the USDOT (the “**Secretary**”) is authorized to provide financial assistance for purposes consistent with Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, codified at 49 U.S.C. Ch. 224 (the “**Act**” or “**RRIF**”);

WHEREAS, the Borrowers have requested that the RRIF Lender make the RRIF Loan (as defined herein) in an aggregate principal amount, not to exceed the Maximum Principal Amount (as defined below), the proceeds of which shall be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Sierra Railway Companies Project (the “**Project**”) (as defined herein) pursuant to the application for RRIF credit assistance dated on October 5, 2023 (the “**Application**”);

WHEREAS, on December 8, 2023, the Secretary approved credit assistance for the Project in the form of the RRIF Loan;

WHEREAS, the RRIF Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, Borrowers agree, jointly and severally, to repay all amounts due pursuant to this Agreement and the RRIF Note (as defined herein) in accordance with the terms and provisions hereof and thereof;

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and among Borrowers and the RRIF Lender as follows:

### ARTICLE I

#### TERMS

Section 1.1 Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1.1 (*Definitions*) or as otherwise defined in this Agreement.

**“Acceptable Credit Rating”** means, with respect to any Person (other than an individual), the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than: (a) at the time a Permitted Investment is made, ‘A+’, ‘A1’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

**“Acquisition”** means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which any Borrower (a) acquires any going business or all or substantially all of the assets of any Person, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

**“Acquisition Liabilities”** means liabilities in connection with any Acquisition to the extent that, if consummated by a Borrower, is a Permitted Acquisition or is otherwise permitted under this Agreement or, if consummated directly by Holdings, does not violate this Agreement, including, without limitation, in respect of seller notes, earn outs and similar obligations.

**“Affiliate”** means, with respect to any Person (other than the RRIF Lender), (a) any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person and (b) any other Person beneficially owning or holding, directly or indirectly: ten percent (10%) or more on a fully-diluted basis of any class of securities or interests (including partnership interests, limited liability company interests or other ownership interests) that constitute ordinary voting power for the election of directors or other members of the governing body of such Person or of such Person’s Affiliate.

**“Agreement”** has the meaning provided in the preamble hereto.

**“Anticipated RRIF Loan Disbursement Schedule”** means the schedule set forth in Exhibit B, reflecting the anticipated disbursement of proceeds of the RRIF Loan, as such schedule may be amended from time to time pursuant to Section 2.2 (*Disbursement Conditions*).

**“Anti-Corruption Laws”** means all U.S. and other applicable laws, rules and regulations as amended from time to time concerning or relating to bribery or corruption.

**“Anti-Money Laundering Laws”** means all U.S. and other applicable laws, rules and regulations as amended from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

**“Application”** has the meaning provided in the recitals hereto.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970, Titles I and II of Pub. L. No. 91-508 (12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, 5316-5322), as amended from time to time, and the regulations promulgated thereunder.

“**Bankruptcy Code**” means the Bankruptcy Code of the United States of America (Title 11 of the U.S. Code), as amended from time to time.

“**Bankruptcy Related Event**” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to a Borrower, fail to make two (2) consecutive payments of RRIF Debt Service in accordance with the provisions of Section 2.6 (*Payment of Principal and Interest*), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing clause (a), or (viii) take any action for the purpose of effecting any of the foregoing.

“**Base Case Financial Model**” means a financial model prepared by the Borrowers forecasting the revenues and expenditures of the Borrowers for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrowers and acceptable to the RRIF Lender as of the Effective Date, which model shall be provided to the RRIF Lender in Microsoft Excel or such other format requested by the RRIF Lender, including the ratios provided for in Section 3.1(j) (Conditions Precedent to Effectiveness) and a summary of the material assumptions used to prepare such forecasts, including the balance sheet and statements of income or operations and cash flow for the Borrowers and their Affiliates.

“**Borrower(s)**” has the meaning provided in the preamble hereto.

“**Borrowers’ Authorized Representative**” means any Person who shall be designated as such pursuant to Section 11.3 (*Borrowers’ Authorized Representative*).

“**Business**” means the term as used in Negative Covenants Section 7.6 (*Investments*) and Section 7.9 (*Conduct of Business; Deployment of Assets*) to describe each Borrower’s general business and not the specific Project.



“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, Davis, California or Washington, D.C.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with U.S. GAAP.

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease for (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under U.S. GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with U.S. GAAP.

“**Change in Control**” means an event or series of events by which:

(a) the Permitted Holder shall cease to beneficially own and control, directly or indirectly, at least a majority on a fully diluted basis of the economic and voting interests of the Equity Interests of Holdings;

(b) Holdings shall cease to beneficially own and control more than 50% on a fully diluted basis of the economic and voting interests in the Equity Interests of each Borrower;

(c) any Person or group of Persons shall have obtained the power (whether or not exercised) to elect a majority of the board of directors of a Borrower; or a “change of control” or similar event shall occur as provided in any other loan or preferred stock documentation relating to a Borrower; and/or

(d) a “change of control” or similar event shall occur as defined in any other loan or preferred stock documentation relating to the Borrowers.

“**Congress**” means the U.S. Congress.

“**Consolidated Capital Expenditures**” means, for any period, the Capital Expenditures incurred by the Borrowers, on a consolidated basis, in accordance with U.S. GAAP.

“**Consolidated EBITDA**” means, for any period, Consolidated Net Income for such period plus: (a) without duplication and to the extent deducted in determining Consolidated Net Income for such period, the sum of: (i) Consolidated Interest Expense in connection with such period; (ii) income tax expense in connection with such period (net of tax refunds); (iii) all amounts attributable to depreciation, depletion and amortization expense in connection with such period; (iv) any extraordinary non-cash charges in connection with such period; (v) any other non-cash charges in connection with such period (but excluding (x) any non-cash charge in respect of an item that was included in Consolidated Net Income in a prior period and (y) any non-cash charge that relates to the write-down or write-off of inventory) and (vi) any other amounts that are approved in writing by the RRIF Lender in its sole discretion; minus (b) without duplication and to the extent

included in determining Consolidated Net Income for such period, (i) any cash payments made during such period in respect of non-cash charges described in clause (a)(v) above taken in a prior period and (ii) any extraordinary gains and any non-cash items of income for such period, all calculated for the Borrowers and their respective Subsidiaries on a consolidated basis in accordance with U.S. GAAP.

**“Consolidated Fixed Charge Coverage Ratio”** means the ratio, determined as of the end of each Fiscal Quarter, of: (a) Consolidated EBITDA earned for the most recently ended four Fiscal Quarters; to (b) the sum without duplication of (i) Consolidated Interest Expense; (ii) scheduled payments of principal on Consolidated Total Indebtedness; (iii) Net Consolidated Capital Expenditures which are not made in connection with the Project; (iv) the portion of taxes based on income paid in cash and provisions for cash income taxes; and (v) all Restricted Payments (excluding Distributions), all calculated for the Borrowers and their Subsidiaries on a consolidated basis for the most recently ended four Fiscal Quarters; provided, however, repayment of the JPMorgan Chase Debt with proceeds of the RRIF Loan shall not be included in the calculation of the Consolidated Fixed Charge Coverage Ratio.

**“Consolidated Interest Expense”** means, for any period, total interest expense (including that attributable to Capital Lease Obligations) of the Borrowers and their respective Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrowers and such Subsidiaries, calculated on a consolidated basis for the Borrowers and their Subsidiaries for such period in accordance with U.S. GAAP.

**“Consolidated Net Income”** means, for any period, the net income (or loss) of the Borrowers and their Subsidiaries, determined on a consolidated basis in accordance with U.S. GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of a Borrower or is merged into or consolidated with a Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of a Borrower) in which a Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by a Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of a Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation or any law applicable to such Subsidiary.

**“Consolidated Total Indebtedness”** means all Indebtedness of the Borrowers and their Subsidiaries other than intercompany Indebtedness between the Borrowers or between any Borrower and Holdings, determined on a consolidated basis in accordance with U.S. GAAP.

**“Consolidated Total Leverage Ratio”** means, as of any date of determination, the ratio of: (a) Consolidated Total Indebtedness as of such date to (b) Consolidated EBITDA for the most recently ended four Fiscal Quarters.

**“Construction Period”** means the period from the Effective Date through the Substantial Completion Date.

“**Construction-Related Contracts**” means that certain Construction Agreement and Terms and Conditions by and between the Borrowers and Granite Construction dated as of October 24, 2023.

“**Construction-Related Contract Party**” means any Person (other than the Borrowers) party to a Construction-Related Contract.

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as Schedule II, and (b) any updates thereto).

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**,” and “**Controlled by**,” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2023 as the base period.

“**Credit Risk Premium**” means a fee that shall be paid by the Borrowers prior to any drawdown. That fee shall be equal to 0% of the amount of any drawdown but, in no event shall such amount exceed \$0.00 in the aggregate, upon the making of the RRIF Loan in the Maximum Principal Amount.

“**DBE**” has the meaning provided in Section 6.19 (*Small and Disadvantaged Businesses*).

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States of America (Title 11 of the U.S. Code), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions, as amended from time to time.

“**Debt Service Payment Commencement Date**” means March 15, 2028.

“**Default**” means any event that, with the giving of notice or the passage of time or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the RRIF Interest Rate plus (b) two hundred (200) basis points.

“**Development Default**” means either the Borrowers fail to (a) diligently prosecute the work related to the Required Project Component of the Project and such failure continues for thirty (30) consecutive days or (b) Substantially Complete the Required Project Component within three (3) years after the Projected Substantial Completion Date.

“**Distribution**” means any dividend or other distribution (whether in cash, securities, assets or other property) with respect to any Equity Interests in any Person or any of such Person’s Subsidiaries, or any payment (whether in cash, securities, assets or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests, or on account of any return of capital to such Person’s shareholders, partners or members (or the equivalent Persons thereof), any option, warrant or other right to acquire any such Equity Interests.

“**Effective Date**” means the date of this Agreement as set forth on its title page.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the Uniform Electronic Transactions Act (California Civil Code § 1633.1 et seq.), as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrowers in connection with the Project; provided, however, that Eligible Project Costs must be consistent with the Act and with all other applicable federal law. According to 49 U.S.C. § 22402(b)(2), railroad operating expenses are not eligible costs.

“**Environmental Laws**” means: (a) any and all applicable federal, state, and local statutes (including 49 U.S.C. § 303), laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions, including all common law, relating to: air emissions; discharges to surface water or ground water; noise emissions; solid or liquid waste disposal; the use, generation, storage, transportation, release or disposal of toxic or hazardous substances or wastes (including Hazardous Materials); biological resources (such as threatened and endangered species); pollution; the protection of health, safety or the environment; or to the release of any materials into the environment; and (b) all laws applicable to the Project referenced in the notice “Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects,” 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import).

“**Equity Interests**” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest or other direct equity interests of the Borrowers.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. §§ 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with any Borrower, is treated as a single employer under section 414(b) or (c) of the Tax Code or, solely for purposes of section 302 of ERISA and section 412 of the Tax Code, is treated as a single employer under section 414 of the Tax Code.

**“ERISA Event”** means (a) a Reportable Event with respect to a Pension Plan, (b) a withdrawal by any Borrower or any ERISA Affiliate from a Pension Plan subject to section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under section 4062(e) of ERISA, (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization, (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Pension Plan or Multiemployer Plan, (e) an event or condition which constitutes grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan, or (f) the imposition of any liability under Title IV of ERISA, other than for the Pension Benefit Guaranty Corporation premiums due but not delinquent under section 4007 of ERISA, upon a Borrower or any ERISA Affiliate.

**“Event of Default”** has the meaning provided in Section 9.1 (*Events of Default*).

**“Event of Loss”** means, with respect to any assets, any event or series of events that causes any portion of such assets to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of property, or a condemnation.

**“Executive Director”** has the meaning provided in the preamble hereto.

**“Existing Indebtedness”** means Indebtedness of any Borrower or its Subsidiaries that has been issued or incurred prior to the Effective Date, as listed and described in Schedule 4.21.

**“FCCR/TLR Mandatory Prepayment Amount”** means the amount resulting from calculations shown on Schedule 2.7(a)(iv) used to determine Financial Covenant Test Prepayment Amounts and Financial Covenant Cure determinations, in each case, as more fully described in Section 2.7(a)(iv) (*Mandatory Prepayments*) hereof.

**“Federal Fiscal Year”** or **“FFY”** means the fiscal year of the Federal Government, which is the twelve (12)-month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

**“Federal Government”** means the United States of America and its departments and agencies.

**“Final Maturity Date”** means the earlier of (a) the latest Payment Date that is not more than thirty-five (35) years following the date on which Substantial Completion occurs or (b) December 15, 2062.

**“Financial Covenant Cure”** has the meaning provided in Section 2.7(a)(iv) (*Mandatory Prepayments*).

**“Financial Covenant Prepayment Schedule”** means a calculation schedule prepared substantially in the form set forth as Schedule 2.7(a)(iv) hereof and delivered to the extent required pursuant to Section 5.1(a)(iii)(C) (*Financial Statements*) hereof.

“**Financial Covenant Test**” or “**Financial Covenant Tests**” means the satisfaction of the following:

(a) The Borrowers shall not permit the Consolidated Fixed Charge Coverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2024, to be less than 1.25 to 1.00. The Consolidated Fixed Charge Coverage Ratio shall be tested on a trailing twelve-month basis as of the end of each Fiscal Quarter.

(b) The Borrowers shall not permit the Consolidated Total Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2024, to exceed the correlative ratio indicated:

<b>Fiscal Quarter</b>	<b>Consolidated Total Leverage Ratio</b>
March 31, 2024 through the Fiscal Quarter ending December 31, 2027	6.25:1.00
March 31, 2028 through the Fiscal Quarter ending December 31, 2028	5.50:1.00
March 31, 2029 through the Fiscal Quarter ending December 31, 2029	5.00:1.00
March 31, 2030 through the Fiscal Quarter ending December 31, 2030	4.50:1.00
March 31, 2031 through the Fiscal Quarter ending December 31, 2031	4.00:1.00
March 31, 2032 and each Fiscal Quarter ending thereafter	3.50:1.00

(c) The Borrowers shall cause the total balances of their unrestricted cash to be equal to or greater than the Minimum Cash Balance Amount as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending March 31, 2024 and as of the last day of each Fiscal Quarter thereafter.

“**Financial Covenant Test Prepayment Amount(s)**” has the meaning ascribed to such term in Section 2.7(a)(iv) (*Mandatory Prepayments*) hereof.

“**Financial Statements**” has the meaning provided in Section 5.1 (*Financial Statements*).

“**Fiscal Quarter**” means any fiscal quarter of the Borrowers.

“**Fiscal Year**” means any consecutive twelve-month period of the Borrowers. As of the Effective Date, the Fiscal Year of the Borrowers that begins on January 1 and ends on December 31 of the same year.

“**Foreign Plan**” means any employee pension benefit plan, program, policy, arrangement or agreement maintained or contributed to by Borrowers or any Subsidiary with respect to employees employed outside the United States (other than any governmental arrangement).

“**FRA**” means the Federal Railroad Administration.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of, or with, any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Government Obligations**” means: (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government; (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks; (c) obligations issued or guaranteed by a Person controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress; and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“**Hazardous Materials**” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and other substances or wastes of any nature regulated under or with respect to which liability or standards of conduct are imposed pursuant to any Environmental Law.

“**Hedging Transaction**” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option, commodity agreement or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“**Holdings**” means Sierra Railroad Company, a California corporation.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person upon which interest charges are customarily paid; (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person; (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business); (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned, purchased, or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed; (g) all guarantees (direct or indirect) by such Person of Indebtedness of others; (h) all Capital Lease Obligations of such Person; (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty; (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, bank guaranties, surety bonds or similar extensions of credit; (k) all obligations, contingent or otherwise, of such Person in respect of earnouts incurred in connection with any Acquisition including, without limitation, in respect of Acquisition Liabilities; and (l) all obligations in respect of a Hedging Transaction. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

**“Indemnitee”** has the meaning provided in Section 8.1 (*Indemnification*).

**“Insolvency Laws”** means the Bankruptcy Code and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

**“Inventory”** means goods that are held by a Person for sale or lease or to be furnished under a contract of service or otherwise consist of raw materials, work in process or materials used or consumed in a business.

**“Investment”** means any investment (cash or otherwise) in any Person, whether by means of: (a) the purchase or other acquisition of Equity Interests of such Person; or (b) a loan, advance or capital contribution to, guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other Indebtedness or interest in, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount invested at the time of financial close as well as any deferred or future commitment to fund an Investment as part of any such agreement for Investment, without adjustment for subsequent increases or decreases in the value of such Investment.

**“JPMorgan Chase Debt”** means the Indebtedness of SNR owing to JPMorgan Chase Bank, N.A. pursuant to that certain Credit Agreement dated as of August 9, 2021, as such Credit Agreement exists as of the date hereof.

**“Lien”** means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention



agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

**“Loan Amortization Schedule”** means the Loan Amortization Schedule reflected in the applicable column of Exhibit F, as amended from time to time in accordance with Section 2.5 (*Outstanding RRIF Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*).

**“Loss Proceeds”** means in the case of a casualty or a condemnation or similar proceeding affecting the Project or assets of the Borrowers, the proceeds of insurance or condemnation resulting from any Event of Loss (excluding any proceeds of business interruption insurance and delay-in-start-up insurance).

**“Material Adverse Effect”** means a material adverse effect on (a) the Project, (b) the Borrowers’ business, operations, properties, liabilities, condition (financial or otherwise), prospects, or the carrying on of the Borrowers’ business or operations (c) the legality, validity or enforceability of any material provision of any RRIF Loan Document, (d) the ability of the Borrowers to enter into, perform or comply with any of its material obligations under any RRIF Loan Document to which it is a party or (e) the RRIF Lender’s rights or remedies available under any RRIF Loan Document.

**“Material Indebtedness”** means Indebtedness (other than the RRIF Loan) of the Borrowers or any of their Subsidiaries in the principal amount of \$1,000,000 for any single item and in an aggregate principal amount exceeding \$2,000,000.

**“Maximum Principal Amount”** an aggregate principal amount, not to exceed \$31,379,805 (excluding interest that is capitalized in accordance with the terms hereof).

**“Mendocino Shareholder Loan”** means the loan owed by Mendocino to Michael Hart evidenced by a certain Promissory Note dated as of June 12, 2019.

**“Minimum Cash Balance Amount”** means (a) at all times prior to December 31, 2023, \$3,000,000 and (b) at all times thereafter, \$4,500,000.

**“Multiemployer Plan”** means any employee benefit plan of the type described in section 4001(a)(3) of ERISA, to which a Borrower or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five (5) plan years has made or been obligated to make contributions, or has any liability.

**“Multiple Employer Plan”** means a Plan with respect to which a Borrower or any ERISA Affiliate is a contributing sponsor, and that has two or more contributing sponsors at least two of whom are not under common control, as such a plan is described in section 4064 of ERISA.

**“NEPA”** means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. §§ 4321, *et seq.*) as amended from time to time, and any successor statute of similar import, and regulations thereunder.

**“NEPA Determination”** means the Categorical Exclusion for the Project issued by the FRA on July 20, 2022 for Mendocino and September 7, 2022 for SNR in accordance with NEPA.

“**Net Cash Proceeds**” means, in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction), the cash proceeds received in respect of such event including any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, net of the sum of: (a) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event; (b) the amount of all payments required to be made as a result of such event to repay any indebtedness (other than the RRIF Loan hereunder) secured by such asset or otherwise subject to mandatory prepayment as a result of such event; and (c) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by the Chief Financial Officer of the relevant Person).

“**Net Consolidated Capital Expenditures**” means Consolidated Capital Expenditures net of the amount financed through long-term Indebtedness or capital contributions in Equity Interests that do not require a regular Distribution.

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of the Borrowers arising under any RRIF Loan Document or otherwise with respect to the RRIF Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Borrower or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming the a Borrower or Affiliate as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, charges, expenses, fees, indemnities and other amounts payable by a Borrower under any RRIF Loan Document and (b) the obligation of the Borrowers to reimburse any amount in respect of any of the foregoing that the RRIF Lender, in its sole discretion, may elect to pay or advance on behalf of the Borrowers.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of Treasury.

“**Optional Project Component**” means, collectively, that portion of the Project set forth on Exhibit M under the heading “Optional Project Component”.

“**Organizational Documents**” means: (a) with respect to any Person that is a Governmental Authority: (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority; and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority: (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person; (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such

Person; and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“**Other Credit Facility**” has the meaning provided in Section 6.17 (*Further Assurances; Most Favored Nations*).

“**Outstanding RRIF Loan Balance**” means the aggregate principal amount drawn by the Borrowers and then outstanding (including capitalized interest, if any) with respect to the RRIF Loan, as determined in accordance with Section 2.5 (*Outstanding RRIF Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*).

“**Patriot Act**” means the USA PATRIOT Act, also known as Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and all related regulations.

“**Payment Date**” means March 15, June 15, September 15 and December 15 of each year during the term of the RRIF Loan.

“**Payment Default**” has the meaning provided in Section 9.1(a) (*Events of Default*).

“**Payment Period**” means any period of three (3) months from (and including) a Payment Date to (but excluding) the immediately succeeding Payment Date, commencing with the three (3)-month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“**Pension Plan**” means any employee pension benefit plan (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is maintained or is contributed to by a Borrower or any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under section 412 of the Tax Code.

“**Permitted Acquisition**” means (i) any Acquisition consented to in writing by the RRIF Lender in the exercise of its reasonable discretion or (ii) the Acquisition by any Borrower in a transaction that satisfies each of the following requirements:

- (a) such Acquisition is not a hostile or contested acquisition;
- (b) the business acquired in connection with such Acquisition is (i) located in the United States, (ii) organized under applicable United States and state laws and (iii) not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the date of this Agreement and any business activities that are substantially similar, related, or incidental thereto;

(c) both before and after giving effect to such Acquisition, each of the representations and warranties in the RRIF Loan Documents is true and correct in all material respects, no Material Adverse Effect shall exist or would result therefrom, and no Default or Event of Default exists, will exist or would result therefrom;

(d) as soon as available, but not less than thirty (30) days prior to such Acquisition, the applicable Borrower has provided the RRIF Lender (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the RRIF Lender including pro forma financial statements, statements of cash flow and projections;

(e) Borrowers shall have furnished to the RRIF Lender a duly and properly completed compliance certificate demonstrating that after giving pro forma effect to such Acquisition, the Borrowers shall be in pro forma compliance with the Financial Covenant Tests;

(f) the aggregate total consideration (including maximum potential total amount of all deferred payment obligations (including earn-outs) and Indebtedness assumed or incurred) for all Acquisitions does not exceed \$5,000,000 during the term of this Agreement; provided, however, that the amount of total consideration for all such Acquisitions shall reset to zero on the fifth year anniversary of this Agreement and on each five-year period thereafter (each a "Reset Date") so long as, on such Reset Date, no Default or Event of Default exists;

(g) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person shall become a wholly-owned Subsidiary of the Borrowers and, a guarantor of the Obligations under this Agreement pursuant to a guaranty in form and substance acceptable to the RRIF Lender in its sole discretion;

(h) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Borrower shall acquire such assets;

(i) if such Acquisition involves a merger or a consolidation involving a Borrower, such Borrower shall be the surviving entity;

(j) in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person shall be terminated unless the Lender in its sole discretion consents otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets shall be terminated;

(k) the Borrower shall have delivered to the Lender the final executed material documentation relating to such Acquisition within ten (10) days following the consummation thereof; and

(l) the Person so acquired shall have positive EBITDA on a trailing twelve-month basis as of the calendar month most recently ended prior to such Acquisition.

**"Permitted Debt"** means:

(a) Existing Indebtedness to the extent acceptable to the RRIF Lender in its sole discretion;

- (b) the RRIF Loan;
- (c) reimbursement obligations in respect of letters of credit, and other financial obligations, executed by the Borrowers in connection with their Business that do not in the aggregate have face amounts exceeding, when combined with any Indebtedness incurred in reliance on clause (n) of this definition, \$1,000,000;
- (d) purchase money obligations or Capital Lease Obligations incurred to finance discrete items of equipment, not comprising an integral part of the Project, incurred in the normal course of the Borrowers' Business, which obligations and leases do not require aggregate payments by the Borrowers in any Fiscal Year in excess of \$250,000 in the aggregate;
- (e) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than ninety (90) days after the respective goods are delivered or the respective services are rendered;
- (f) guarantees of the Borrowers or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of the Borrowers or any Subsidiary; provided, that if the Indebtedness that is being guaranteed is unsecured and/or subordinated to the Obligations, then such guarantee shall also be unsecured and/or subordinated to the Obligations;
- (g) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;
- (h) Indebtedness (i) resulting from a bank or other financial institution honoring a check, draft or similar instrument in the ordinary course of business or (ii) arising under or in connection with cash management services in the ordinary course of business;
- (i) Indebtedness consisting of the financing of insurance premiums payable within one (1) year;
- (j) Subordinated Indebtedness other than Indebtedness referenced in clause (k) below;
- (k) unsecured Indebtedness owing to sellers of assets or Equity Interests to a Borrower that is incurred by the applicable Borrower in connection with the consummation of one or more Permitted Acquisitions, so long as the aggregate principal amount (including the maximum amount (or the reasonably determined maximum amount owing, if not capped, as of the date of incurrence) in respect of "earnouts" and similar contingent Indebtedness obligations) for all such Indebtedness does not exceed \$1,000,000 at any one time outstanding;
- (l) unsecured Indebtedness in respect of the SNR Shareholder Loans and the Mendocino Shareholder Loan;
- (m) Indebtedness of (i) any Subsidiary to a Borrower or to any other Subsidiary, (ii) a Borrower to any Subsidiary or to another Borrower and (iii) any Borrower to Holdings;

(n) other Indebtedness not to exceed, when combined with any Indebtedness incurred in reliance on clause (c) of this definition, \$1,000,000 outstanding at any time; and

(o) the JPMorgan Chase Debt to the extent that (i) the entire outstanding amount of the JPMorgan Chase Debt is secured exclusively by Liens on funds deposited in the SNR/Chase Account as such deposits exist on the date hereof and (ii) the RRIF Lender has not advanced RRIF Loans in an amount equal to or in excess of \$4,000,000.

**“Permitted Holder”** means Michael Hart.

**“Permitted Investments”** means (with respect to the investment of the proceeds of the RRIF Loan):

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

**“Permitted Liens”** means:

(a) Liens imposed pursuant to the RRIF Loan Documents, to the extent applicable;

(b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 6.10 (*Material Obligations; Liens*);

(c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 6.10 (*Material Obligations; Liens*);

(d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 9.1(f) (*Events of Default*);

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrowers;

(h) any Lien on any property or asset of a Borrower existing on the Effective Date, as listed and described in Schedule 4.21; provided, that (i) such Lien shall not apply to any other property or asset of the Borrowers and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(i) any Lien existing on any property or asset prior to the acquisition thereof by a Borrower; provided, that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall apply solely to the acquired asset and not to any other property or assets of a Borrower, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(j) purchase money security interests in equipment hereafter acquired by a Borrower; provided, that: (i) such security interests secure indebtedness for borrowed money permitted by Section 7.1 (*Indebtedness*); (ii) such security interests are incurred, and the indebtedness secured thereby is created, within ninety (90) days after such acquisition; (iii) the indebtedness secured thereby does not exceed the fair market value of such equipment at the time of such acquisition; and (iv) such security interests do not apply to any other property or assets (other than accessions to such equipment) of the Borrowers;

(k) Liens (i) of a collecting bank arising under section 4-210 of the Uniform Commercial Code on items in the course of collection, and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) that are customary in the banking industry;

(l) any interest or title of a lessor, sublessor, licensor or sub-licensor under leases or licenses permitted by this Agreement that are entered into in the ordinary course of business;

(m) Liens securing Indebtedness and other obligations in an aggregate amount not exceeding \$250,000 at any time outstanding;

(n) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business; and

(o) Liens on the SNR/Chase Account securing the JPMorgan Chase Debt to the extent the JPMorgan Chase Debt constitutes Permitted Indebtedness hereunder.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Plan**” means any employee benefit plan within the meaning of section 3(3) of ERISA, maintained for employees of a Borrower, any Affiliate or any Subsidiary, or any such plan to which a Borrower or any Subsidiary is required to contribute on behalf of any of its employees or with respect to which any Borrower has any liability.

“**Project**” has the meaning given in Exhibit M.

“**Project Budget**” means the budget for the Project in the aggregate amount of \$31,319,805 attached to this Agreement as Schedule I showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time with the approval of the RRIF Lender.

“**Projected Substantial Completion Date**” means December 31, 2027.

“**Rail Line**” means that segment of railroad that is part of the Project where SNR’s portion is located on SNR’s Oakdale Division which extends from Riverbank in California’s Central Valley to Standard in California’s Sierra Nevada foothills (the “Line”). The Line transverses Stanislaus and Tuolumne Counties in California and the following California communities and towns: Jamestown, East Sonora, Chinese Camp, Mono Vista, East Oakdale, Riverbank, Sonora, a census county division, Standard and Cooperstown, and touches the Modesto MSA. The Congressional District affected is California’s 5<sup>th</sup> Congressional District. Mendocino’s portion of the Project is on Mendocino’s Mendocino Division, an approximately 40-mile right-of-way, which extends from Milepost 0 (at the city of Fort Bragg, California) to Milepost 40 (at Willits, California) in Mendocino County, California and the cities of Fort Bragg and Willits.

“**Rating Agency**” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“**Related Documents**” means the RRIF Loan Documents and the agreements related to a Hedging Transaction (if any).

“**Reportable Event**” means any of the events set forth in section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“**Required Project Component**” means, collectively, that portion of the Project set forth on Exhibit M under the heading “Required Project Component”.

“**Requisition**” has the meaning provided in Section 2.2 (*Disbursement Conditions*).



**“Restricted Payment”** means, with respect to the Borrowers: (a) any Distribution; (b) any management fees (or similar consulting or advisory fees) paid to Affiliates but excluding the actual cost of reasonable shared personnel or services provided by Affiliates that are subject to the limitations set forth Section 7.7 (*Transactions with Affiliates*) hereof; (c) any earn-out, seller note or similar payments made by any Borrower (whether directly or indirectly through a Distribution to Holdings) in respect of any Acquisition including, without limitation, to satisfy any Acquisition Liabilities; and (d) any payments of Indebtedness by the Borrowers to any Affiliate including, without limitation, Holdings or any payee of the SNR Shareholder Loans or the Mendocino Shareholder Loan, except for repayments of the SNR Shareholder Loans to the extent made with proceeds from the SNR/Chase Account which were on deposit in the SNR/Chase Account as of the date of this Agreement and which are not otherwise pledged as security for any other Indebtedness of the Borrowers.

**“RRIF Debt Service”** means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding RRIF Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by Borrowers of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrowers), in each case (a) as set forth on Exhibit F, and (b) due and payable on such Payment Date in accordance with the provisions of Section 2.6(c) (*Payment of Principal and Interest*).

**“RRIF Interest Rate”** has the meaning provided in Section 2.4 (*Interest Rate*).

**“RRIF Lender”** has the meaning provided in the preamble hereto.

**“RRIF Lender’s Authorized Representative”** means the Executive Director and any other Person who shall be designated as such pursuant to Section 11.4 (*RRIF Lender’s Authorized Representative*).

**“RRIF Loan”** means the loan made by the RRIF Lender to the Borrowers on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed the Maximum Principal Amount (excluding capitalized interest, if any), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrowers.

**“RRIF Loan Documents”** means this Agreement and the RRIF Note.

**“RRIF Note”** means that certain Promissory Note, dated as of the Effective Date, made by the Borrowers in favor of the RRIF Lender substantially in the form of Exhibit A hereto.

**“Sanctioned Country”** means, at any time, a country or territory which is itself the subject or target of any Sanctions.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“**Secretary**” means the United States Secretary of Transportation.

“**Servicer**” means such entity or entities as the RRIF Lender shall designate from time to time to perform, or assist the RRIF Lender in performing, certain duties hereunder.

“**SNR/Chase Account**” means that certain account, number 237088195, at Chase Bank, N.A.

“**SNR Shareholder Loans**” means the loans owed by SNR to Chris Hart and Michael Hart, evidenced by certain Promissory Notes each dated as of June 12, 2019.

“**Solvent**” means, as to any Person as of any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person; (b) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature; and (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**STB**” means the Surface Transportation Board or any successor thereto.

“**Subsidiary**” means, with respect to any Person (herein referred to as the “**parent**”), any corporation, limited liability company, partnership, association or other business entity of which more than 50% of the securities or other ownership interests having ordinary voting power is, or with respect to which the rights to control management (pursuant to any contract or other agreement or otherwise) are, at the time as of which any determination is being made, owned, controlled or held by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

“**Subordinated Indebtedness**” means any Indebtedness of any Borrower or any Subsidiary of any Borrower which is subordinated to the Obligations as to right and time of payment and as to other rights and remedies thereunder and having such subordination and other terms as are, in each case, satisfactory to the RRIF Lender in its sole discretion.

“**Substantial Completion**” or “**Substantially Complete**” means completion of the Project in accordance with the description set forth on Exhibit M hereof as determined in good faith by the RRIF Lender.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Tax Code**” means the Internal Revenue Code of 1986, Pub. L. 99-514, as amended from time to time.

“**Total Project Costs**” means: (a) the aggregate costs paid or incurred or to be paid or incurred by the Borrowers in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance, and costs of issuance; (b) amounts, if any, required by the RRIF Loan Documents to be paid into any fund or account upon the incurrence of the RRIF Loan; and (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any Indebtedness of the Borrowers, in each case in connection with the Project (other than the RRIF Loan).

“**Uncontrollable Force**” means any cause beyond the control of a Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that no Borrower shall be required to settle any strike or labor disturbance in which it may be involved); or (b) the order or judgment of any federal, or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of any Borrower and such Borrower does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of a Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in each jurisdiction applicable to a Borrower.

“**USDOT**” has the meaning provided in the preamble hereto.

“**U.S. GAAP**” or “**GAAP**” means generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America. Notwithstanding anything to the contrary contained in this Agreement or any other RRIF Loan Document, references to consolidated financial results or performance set forth herein shall mean the combined financial results or performance of the Borrowers and their Subsidiaries unless specifically referenced to mean the consolidated financial results or performance of Holdings and its Subsidiaries.

Section 1.2 Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever a Borrower’s knowledge is implicated in this Agreement or the phrase “to Borrowers’ knowledge” or a similar phrase is used in this Agreement, a Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of such Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall

otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and any appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 11.12 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

## ARTICLE II

### ISSUANCE OF DEBT

Section 2.1 RRIF Loan Amount. Subject to the terms and conditions of this Agreement and the Act, including the payment of the Credit Risk Premium by the Borrowers, the RRIF Lender agrees to make the RRIF Loan to the Borrowers in a principal amount not to exceed \$31,379,805 (excluding interest that is capitalized in accordance with the terms hereof). RRIF Loan proceeds shall be disbursed from time to time in accordance with Section 2.2 (*Disbursement Conditions*) and Section 3.2 (*Conditions Precedent to All Disbursements*).

#### Section 2.2 Disbursement Conditions.

(a) RRIF Loan proceeds shall be disbursed solely with respect to Eligible Project Costs paid or incurred by or on behalf of the Borrowers in connection with the Project in one or more disbursements substantially in accordance with the Anticipated RRIF Loan Disbursement Schedule; provided, however, that no disbursements of the RRIF Loan proceeds shall be made in connection with the Optional Project Component unless and until Eligible Project Costs have been incurred in respect of the Optional Project Component.

(b) Each disbursement of the RRIF Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in Appendix One to Exhibit D, along with all documentation and other information required thereby, submitted by the Borrowers to, and approved by, the RRIF Lender, all in accordance with the procedures of Exhibit D and subject to the requirements of this Section 2.2 (*Disbursement Conditions*) and the conditions set forth in Section 3.2 (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of RRIF Loan proceeds shall be made on or after the date that is the earlier of (i) a Development Default or (ii) one (1) year after Substantial Completion. If the Borrowers intend to utilize the RRIF Loan proceeds to make progress payments for the Project construction work performed under the Construction-Related Contracts, the Borrowers shall demonstrate to the satisfaction of the RRIF Lender that such progress payments are commensurate with the value of the work that has been completed.

(c) Borrowers shall deliver copies of each Requisition to the RRIF Lender and FRA on or before the first (1<sup>st</sup>) Business Day of each month for which a disbursement is requested. Subject to Section 2.2(e), if the RRIF Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15<sup>th</sup>) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15<sup>th</sup>) day is not a Business Day. Express denial of a Requisition by the RRIF Lender shall be provided substantially in the form annexed hereto as Appendix Two to Exhibit D (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(d) The Borrowers may amend the Anticipated RRIF Loan Disbursement Schedule by submitting a revised version thereof to the RRIF Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(e) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 2, Article III (*Conditions to Lending*) or Exhibit D (*Requisition Procedures*)), in no event shall the RRIF Lender have any obligation to make any disbursement of proceeds of the RRIF Loan to the Borrowers if the RRIF Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any Federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 2.3 Term. The term of the RRIF Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

Section 2.4 Interest Rate. The interest rate with respect to the RRIF Loan (the “**RRIF Interest Rate**”) shall be 4.21% per annum. Interest will be computed on the Outstanding RRIF Loan Balance (as well as on any past due interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrowers shall pay interest on the Outstanding RRIF Loan Balance and on any interest accrued thereon but unpaid as of the applicable Payment Date (including interest accruing after the date of any filing by the Borrowers of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrowers) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrowers shall pay interest on the Outstanding RRIF Loan Balance and on any interest accrued thereon but unpaid as of the applicable Payment Date (including interest accruing after the date of any filing by the Borrowers of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrowers) at the Default Rate from (and including) the date of such Event of Default first occurred to (but excluding) the earlier to occur of: (a) the date such Event of Default has been waived by the RRIF Lender and (b) the date the Outstanding RRIF Loan Balance and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 2.5 Outstanding RRIF Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule.

(a) The Outstanding RRIF Loan Balance will be (i) increased on each occasion on which the RRIF Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the RRIF Loan is capitalized pursuant to the provisions of Section 2.6(b) (*Payment of Principal and Interest*), if applicable, by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding RRIF Loan Balance, by the amount of principal so paid. The RRIF Lender may in its discretion at any time and from time to time, or when so requested by the Borrowers, advise the Borrowers by written notice of the amount of the Outstanding RRIF Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in Exhibit F from time to time, in accordance with the principles set forth below in this clause (b), to reflect (i) any change to the Outstanding RRIF Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by Borrowers under this Agreement, and (iii) such other information as the RRIF Lender may determine is necessary for administering the RRIF Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any partial prepayments of the Outstanding RRIF Loan Balance pursuant to Section 2.7 (*Prepayment*) shall be applied in accordance with Section 2.7(c) (*Prepayment*). Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding RRIF Loan Balance other than prepayments shall be applied to reduce future payments due on the RRIF Note in inverse order of maturity. Absent manifest error, the RRIF Lender's determination of such matters shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrowers' obligations hereunder or under any other RRIF Loan Document. The RRIF Lender shall provide the Borrowers with a copy of Exhibit F as revised, but no failure to provide or delay in providing Borrowers with such copy shall affect any of the obligations of the Borrowers under this Agreement or the other RRIF Loan Documents.

Section 2.6 Payment of Principal and Interest.

(a) Payment Dates. The Borrowers agree to pay the principal of and interest on the RRIF Loan by making payments in accordance with the provisions of this Agreement on each Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the acceleration of the maturity of the RRIF Loan or otherwise); provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date.

(b) Capitalized Interest Period. No payment of the principal of or interest on the RRIF Loan is required to be made during the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period (the "**Capitalized Interest Period**"). On each March 15, June 15, September 15 and December 15 of each Fiscal Year occurring during the Capitalized Interest Period, interest accrued on the RRIF Loan in the three (3)-month period ending

immediately prior to such date shall be capitalized and added to the Outstanding RRIF Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the RRIF Lender shall give written notice to the Borrowers stating the Outstanding RRIF Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of Borrowers hereunder or under any of the other RRIF Loan Documents.

(c) Payment of RRIF Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date, Borrowers shall pay RRIF Debt Service in the amounts set forth in respect of such Payment Date on Exhibit F, as the same may be revised as provided in Section 2.5 (*Outstanding RRIF Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*), which payments shall be made in accordance with Section 2.6(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the RRIF Note shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by the RRIF Lender pursuant to Section 11.12 (*Notices; Payment Instructions*), as modified in writing from time to time by the RRIF Lender.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding RRIF Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the RRIF Loan shall be accelerated pursuant to the provisions of Section 9.1 (*Events of Default*)).

(f) No Defeasance. Anything to the contrary, the RRIF Loan shall not be subject to defeasance and no amounts in respect of the RRIF Loan shall be considered or deemed to have been paid until the RRIF Lender shall have received irrevocable payment in immediately available funds in accordance with the requirements for payment set forth in this Agreement.

#### Section 2.7 Prepayment.

(a) Mandatory Prepayments. The Borrowers shall prepay the RRIF Loan in whole or in part, without penalty or premium:

(i) if, pursuant to Section 6.13 (*Events of Loss; Loss Proceeds*), the Borrowers do not elect to fully restore or replace the assets subject to an Event of Loss, such prepayment shall be in the amount of all such Loss Proceeds or Outstanding RRIF Loan Balance, whichever is lower, and shall be due on the later of (x) five (5) days after such election and (y) receipt of such Loss Proceeds by the payee thereof, but in no event later than five (5) days after receipt of Loss Proceeds;

(ii) in the amount of (y) 100% of Net Cash Proceeds from the sale, transfer or other disposition of any assets by any Borrower (other than any sale, transfer or disposition of assets permitted by Section 7.4(b) (*Merger, Dissolution or Sale of Assets*)) on the date of such Borrower's receipt of such Net Cash Proceeds and (z) 50% of Net Cash Proceeds from the sale, transfer or other disposition of any assets by any Borrower permitted by Section 7.4(b)(B)(vii) (*Merger, Dissolution or Sale of Assets*);

(iii) upon any voluntary prepayment of other Subordinated Indebtedness, pro rata with such voluntary prepayment; or

(iv) upon failure by the Borrowers to satisfy any or all of the Financial Covenant Tests in respect of the Consolidated Fixed Charge Coverage Ratio and/or the Consolidated Total Leverage Ratio for nine (9) consecutive Fiscal Quarters (inclusive of the original Fiscal Quarter with respect to which the Borrowers failed to so satisfy), in an amount equal to the lesser of (y) the FCCR/TLR Mandatory Prepayment Amount (as calculated in accordance with the Financial Covenant Prepayment Schedule delivered for such Fiscal Quarter) and (z) an amount that would reduce the total balance of unrestricted cash of the Borrowers to the amount required to satisfy the Minimum Cash Balance Financial Covenant Test as of the date of such prepayment (such prepayment amount, the “Financial Covenant Test Prepayment Amount”). If (1) the FCCR/TLR Mandatory Prepayment Amount is equal to zero, or (2) the Financial Covenant Test Prepayment Amount is equal to the FCCR/TLR Mandatory Prepayment Amount and such prepayment is made in full, then the Borrowers shall be deemed to have satisfied the Financial Covenant Tests as of the relevant date of determination with the same effect as though there had been no failure to so satisfy the Financial Covenant Tests at such date, and the failure to satisfy such Financial Covenant Tests shall be deemed cured for purposes of the RRIF Loan Documents (such cure, a “Financial Covenant Cure”).

The Borrowers shall provide written notice to the RRIF Lender at least two (2) Business Days prior to the date on which they make any mandatory prepayment; provided, that the Borrowers’ failure to deliver such notice shall not diminish, impair or otherwise affect the Borrowers’ obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 2.7(a) (*Prepayment*) shall be accompanied by a certificate signed by the Borrowers’ Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrowers may prepay the RRIF Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrowers; provided, however, that such prepayments shall be in principal amounts of \$100,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the RRIF Lender such principal amount of the RRIF Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the RRIF Loan shall be made on such date and in such principal amount as shall be specified by the Borrowers in a written notice delivered to the RRIF Lender. In the case of any optional prepayment, such written notice shall be delivered to the RRIF Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the RRIF Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrowers may, without penalty or premium, rescind its announced optional prepayment by further written notice to the RRIF Lender. Anything in this Section 2.7(b) (*Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrowers to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) General Prepayment Instructions. Upon the RRIF Lender’s receipt of confirmation that payment in full of the entire Outstanding RRIF Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of an optional prepayment, the RRIF Lender shall



surrender the RRIF Note to the Borrowers or their representative at the principal office of the RRIF Lender or certify to the Borrowers that the RRIF Note has been destroyed in accordance with the RRIF Lender's procedures. If the Borrowers prepay only part of the unpaid balance of principal of the RRIF Loan, such partial prepayments of principal shall be applied to reduce future payments due on the RRIF Loan in inverse order of maturity; provided, however, that any prepayments made in accordance with Section 2.7(a)(iv) (*Mandatory Prepayments*) above shall be applied pro rata to the remaining amortization payments of the RRIF Loan. Following any partial prepayment of the RRIF Loan, the RRIF Lender may provide to the Borrowers a modified Exhibit F in accordance with Section 2.5 (*Outstanding RRIF Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*). Absent manifest error, the RRIF Lender's determination of such matters as set forth on Exhibit F shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrowers' obligations hereunder or under any other RRIF Loan Document. Any principal amount of the RRIF Loan that is subject to a voluntary prepayment notice (as described in Section 2.7(a) above) but that is not so paid on the applicable prepayment date shall continue to bear interest until payment thereof at the rate provided for in Section 2.4 (*Interest Rate*).

### ARTICLE III

#### CONDITIONS TO LENDING

Section 3.1 Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the RRIF Lender:

(a) The Borrowers shall have duly executed and delivered to the RRIF Lender this Agreement, the RRIF Note and each of the RRIF Loan Documents, each in form and substance satisfactory to the RRIF Lender.

(b) Counsel to the Borrowers shall have rendered to the RRIF Lender customary legal opinions satisfactory to the RRIF Lender in its reasonable discretion (including those opinions set forth on Exhibit G).

(c) The Borrowers shall have provided a certificate from the Borrowers' Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as Exhibit C with respect to each Borrower and its principals (as defined in 2 CFR § 180.995).

(d) The Borrowers shall have delivered to the RRIF Lender a certificate from the Borrowers' Authorized Representative in the form attached hereto as Exhibit H (i) as to the satisfaction of certain conditions precedent set forth in this Section 3.1 (*Conditions Precedent to Effectiveness*) as required by the RRIF Lender, (ii) designating the Borrowers' Authorized Representative, and (iii) confirming such person's position and incumbency.

(e) The Borrowers shall have provided written consent to the transactions contemplated by this Agreement from the holder of the JPMorgan Chase Debt.

(f) The Borrowers shall have provided to the RRIF Lender certified and complete copies of the most recent audited Financial Statement.

(g) The Borrowers shall have delivered to the RRIF Lender the results of a recent search (i.e., no more than ten (10) Business Days prior to the Effective Date) in (i) the jurisdiction of formation and the jurisdiction of the principal place of business of each Borrower, (ii) each jurisdiction where assets of any Borrower are located and (iii) each other jurisdiction or Governmental Authority that the RRIF Lender may reasonably request of all effective UCC financing statements, fixture filings, state tax lien filings, federal tax lien filings, judgment lien filings, bankruptcy filings and litigation filings which have been made with respect to any Borrower or their respective properties, together with copies of all such filings disclosed by such search, and each such search shall reveal no Liens on any of the assets of the Borrowers, except for Permitted Liens or Liens to be discharged on or prior to the Effective Date.

(h) The Borrowers shall have delivered to the RRIF Lender certificates of insurance evidencing (i) that the Borrowers and, as applicable, the Construction-Related Contract Party, have in effect as of the Effective Date insurance with respect to the Project and the Borrowers, as applicable, all of which meets the requirements of Section 6.6 (*Insurance*) and (ii) that each liability policy (other than workers' compensation insurance) reflects that the RRIF Lender as an additional insurance and (iii) at the RRIF Lender's request, copies of such insurance policies.

(i) The Borrowers shall have demonstrated to the RRIF Lender's satisfaction that they have obtained all Governmental Approvals necessary to commence construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(j) The Borrowers shall have delivered to the RRIF Lender a certificate from the Borrowers' Authorized Representative as to the Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall: (i) demonstrate that the Consolidated Fixed Charge Coverage Ratio as of the last day of any Fiscal Year measured therein and based on a trailing twelve month basis as of the end of such Fiscal Year, beginning with the Fiscal Year ending December 31, 2022, will be at least 1.25:1.00; (ii) demonstrate that Consolidated Total Leverage Ratio as of the last day of any Fiscal Year measured therein and based on a trailing twelve month basis as of the end of such Fiscal Year, beginning with the Fiscal Year ending December 31, 2022, will not be in excess of the Consolidated Total Leverage Ratio required pursuant to the terms hereof for such Fiscal Year; (iii) demonstrate that the total balances of unrestricted cash of the Borrowers will, as of the last day of any Fiscal Year beginning with the Fiscal Year ending December 31, 2022, be equal to or greater than the Minimum Cash Balance Amount; and (iv) otherwise be in form and substance acceptable to the RRIF Lender.

(k) Reserved.

(l) The Borrowers shall have paid in full all invoices delivered by the RRIF Lender to the Borrowers as of the Effective Date for the fees and expenses of the RRIF Lender's counsel and financial advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof.

(m) Borrowers shall have provided evidence satisfactory to the RRIF Lender of compliance with NEPA.

(n) The Borrowers shall have (i) obtained a Federal Employer Identification Number, (ii) obtained a Data Universal Numbering System number or Unique Entity Identifier number, as appropriate, and (iii) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).

(o) The Borrowers shall have provided the RRIF Lender with any necessary certificate of public convenience and necessity (or similar document) from the STB.

(p) The Borrowers shall have provided to the RRIF Lender evidence that each Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrowers' Authorized Representative: (i) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (ii) a copy of all resolutions authorizing such Borrower to execute and deliver, and to perform its respective obligations under, the RRIF Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by such Borrower relating to the matters described therein, and (iii) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the RRIF Loan Documents.

(q) The Borrowers shall have provided the RRIF Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the RRIF Lender and in sufficient time prior to the Effective Date to permit the RRIF Lender and the FRA to review such costs.

(r) The Borrowers shall provide certified, complete, and fully executed copies of any Construction-Related Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in force and effect and in form and substance satisfactory to the RRIF Lender.

(s) The representations and warranties of the Borrowers set forth in this Agreement and in each other RRIF Loan Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(t) The Borrowers shall have provided a certificate from Borrowers' Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as Exhibit J in accordance with 49 CFR § 20.100(b).

(u) The Borrowers shall have provided a plan for incorporation of the procedures described in Section 6.19 (*Small and Disadvantaged Businesses*) into the Borrowers' implementation of the Project in form and substance satisfactory to the RRIF Lender or, if the Borrowers are not able to substantially incorporate 49 CFR Part 26 elements in accordance with Section 6.19(b) (*Small and Disadvantaged Businesses*), the RRIF Lender shall have received a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

(v) The Borrowers shall have delivered such other agreements, documents, instruments, opinions and other items required by the RRIF Lender, all in form and substance satisfactory to the RRIF Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(w) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrowers submitted the RRIF Application to the RRIF Lender.

Section 3.2 Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the RRIF Lender shall have no obligation to make any disbursement of loan proceeds to the Borrowers (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the RRIF Lender:

(a) The RRIF Lender shall have received payment in full of the Credit Risk Premium with respect to such RRIF Loan disbursement at least three (3) Business Days prior to the proposed disbursement date for such RRIF Loan, which payment shall be made in accordance with Section 2.6(d) (*Manner of Payment*).

(b) Reserved.

(c) Reserved.

(d) The Borrowers shall have demonstrated to the RRIF Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(e) Each of the insurance policies obtained by the Borrowers in satisfaction of the conditions in Section 3.1 (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(f) At the time of, and immediately after giving effect to, any disbursement of RRIF Loan proceeds then currently requested, (i) no Event of Default hereunder or event of default under any other Related Document and (ii) no Default hereunder or under any Related Document, in each case, shall have occurred and be continuing.

(g) The representations and warranties of the Borrowers set forth in this Agreement and in each other RRIF Loan Document shall be true, correct, and complete in all material respects as of each date on which any disbursement of the RRIF Loan is made, except to the extent such

representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct in all respects as of such earlier date).

(h) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date Borrowers submitted the Application to the RRIF Lender.

(i) Borrowers shall have delivered to the RRIF Lender a Requisition that complies with the provisions of Section 2.2 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the RRIF Lender.

(j) The Borrowers shall have paid in full all invoices received from the RRIF Lender as of the date of disbursement of the RRIF Loan, for the fees and expenses of the RRIF Lender's counsel and financial advisors and any auditors or other consultants employed by the RRIF Lender for the purposes hereof.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

The Borrowers hereby represent and warrant, jointly and severally, that, as of the Effective Date and as of each date on which any disbursement of the RRIF Loan is requested or made:

Section 4.1 Organization; Power and Authority. Each Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of California, has full legal right, power and authority to execute and deliver each Related Document and to consummate and perform all transactions contemplated thereby and has duly authorized the execution, delivery and performance of each Related Document. Each Borrower is qualified to do business in the State and in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

Section 4.2 Officers' Authorization. As of the Effective Date, the officers of each Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which such Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

Section 4.3 Due Execution; Enforceability. Each Related Document in effect as of any date on which this representation and warranty is made, and to which any Borrower is a party, has been duly authorized, executed and delivered by such Borrower and constitutes the legal, valid and binding agreement of such Borrower enforceable in accordance with its terms, except as such enforceability (a) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (b) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

Section 4.4 Non-Contravention. The execution and delivery of the Related Documents to which any Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related

Documents will not: (a) conflict with such Borrower's Organizational Documents; (b) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by such Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which such Borrower is a party or by which it or its properties or assets are otherwise subject or bound; or (c) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of such Borrower.

Section 4.5 Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of any Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (a) the execution and delivery by such Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (b) (i) the consummation of any transaction contemplated by the Related Documents or (ii) the fulfillment of or compliance by such Borrower with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

Section 4.6 Litigation. As of the Effective Date, except as set forth in Schedule 4.6 there is no action, suit, proceeding or, to the knowledge of any Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of any Borrower, threatened against or affecting the Project or the ability of any Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of any Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of any Borrower, threatened against or affecting the Project, any Borrower or the assets, properties or operations of any Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrowers' knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Construction-Related Contract Parties that could reasonably be expected to result in a Material Adverse Effect. No Borrower is in default (and no Default has occurred) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

Section 4.7 Reserved.

Section 4.8 No Debarment. Borrowers have fully complied with their verification obligations under 2 CFR § 180.320 and confirms that, to their knowledge, neither any Borrower nor any of their respective principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 3.1 (*Conditions Precedent to Effectiveness*). Further, the Borrowers have fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. No Borrower is aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

Section 4.9 Accuracy of Representations and Warranties. The representations, warranties and certifications of each Borrower set forth in this Agreement and the other Related Documents to which it is a party are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

Section 4.10 Compliance with Federal Requirements. The Borrowers have complied, with respect to the Project, all applicable federal requirements listed at Exhibit E.

Section 4.11 No Defaults.

(a) No Borrower is in default under the terms of any Related Document, and no Default or Event of Default has occurred.

(b) No Borrower is in default under any indenture, contract, mortgage, franchise, lease, agreement, permit, or any other instrument to which it is a party; in violation of any law, rule or regulation, judgment, order, writ, injunction or decree of any court applicable to such Person, or in default under or cited for noncompliance with any order, license, or regulation of any Governmental Authority applicable to such Borrower, which defaults, citations, violations or noncompliance individually or in the aggregate could reasonably be expected to cause a Material Adverse Effect.

(c) No Borrower is a party or subject to any existing or contingent contract, agreement, debt, mortgage, indenture, instrument, judgment, decree, obligation or other liability that could reasonably be expected to have a Material Adverse Effect.

Section 4.12 Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by any Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

Section 4.13 Construction-Related Contracts. Each Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Construction-Related Contract have been satisfied. The Borrowers have delivered to the RRIF Lender a fully executed, complete, and correct copy of each such Construction-Related Contract (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives any Borrower or, to such Borrower's knowledge, any Construction-Related Contract Party, the right to terminate any Construction-Related Contract. No Borrower is in breach of any material term in or in default under any Construction-Related Contract, and to the knowledge of the Borrowers, no party to any Construction-Related Contract is in breach of any material term therein or in default thereunder. Each Construction-Related Contract was procured pursuant to a competitive bidding process in which at least one bidder was not an Affiliate of a Borrower, or an entity in which any officer, director, or employee of a Borrower, or any Affiliate thereof, has a financial interest.

Section 4.14 Information. The information furnished by the Borrowers to the RRIF Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished.

Section 4.15 OFAC; Anti-Corruption Laws.

(a) None of any Borrower nor, to the knowledge of the Borrowers, any Construction-Related Contract Party is a Sanctioned Person.

(b) None of any Borrower nor, to the knowledge of the Borrowers, any Construction-Related Contract Party, is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (i) any applicable Anti-Money Laundering Laws; (ii) any applicable Sanctions; (iii) any applicable Anti-Corruption Laws; or (iv) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal.

(c) There are no pending or, to the knowledge of the Borrowers, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, any Borrower or any Construction-Related Contract Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws.

(d) No use of proceeds of the RRIF Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

Section 4.16 Compliance with Law.

(a) Each of the Borrowers and their Subsidiaries is in compliance with the requirements of all applicable laws and all orders, writs, injunctions and decrees applicable to it or to its properties, including those set forth on Exhibit E, to the extent applicable, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to so comply, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) To Borrowers' knowledge, each Construction-Related Contract Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws relating to the Project, including those set forth on Exhibit E, to the extent applicable.

(c) No notices of violation of any applicable law have been issued, entered or received by any Borrower or, to such Borrower's knowledge and solely in respect of the Project or any Construction-Related Contract, any Construction-Related Contract Party, other than, in each case, notices of violations that are immaterial.



Section 4.17 Environmental Matters.

(a) Each of the Borrowers and their respective Subsidiaries is in compliance with all Environmental Laws, and, to such Borrower's knowledge, each Construction-Related Contract Party is in compliance with all Environmental Laws applicable to the Project.

(b) All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect.

(c) Neither any Borrower nor any Subsidiary has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrowers or any Subsidiary is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to any Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrowers or any Subsidiary with any Environmental Law or Governmental Approval.

(d) The Borrowers have provided to the RRIF Lender confirmation of compliance regarding Environmental Laws and Governmental Approval relating to Environmental Laws that are required for the Project and all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrowers regarding the Borrowers' or the Project's compliance with (i) Environmental Laws, and (ii) Governmental Approvals relating to Environmental Laws that are required for the Project.

Section 4.18 Sufficient Rights and Utilities. The Borrowers possess either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Project. As of any date on which this representation and warranty is made, the Construction-Related Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrowers sufficient to enable the Borrowers to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

Section 4.19 Insurance. The Borrowers are in compliance with all insurance obligations required under each Construction-Related Contract and the other Related Documents.

Section 4.20 Title. Each Borrower and each of its Subsidiaries has good title to, or a valid leasehold interest in, all of its real and personal property, except where the failure to have such title or leasehold interest in such property could not reasonably be expected to have a Material Adverse Effect, and all such property is subject to no liens other than Permitted Liens.

Section 4.21 Indebtedness and Liens. Schedule 4.21 lists all Existing Indebtedness and Liens of the Borrowers as of the Effective Date and with respect thereto identifies any collateral securing such Existing Indebtedness and Liens. In addition, and not in limitation of the foregoing,

Borrowers have caused an authorized and properly filed UCC termination statement to be filed which terminates that certain UCC financing statement filed with the California Secretary of State, file number #147438271481 naming Mendocino Railway as debtor, and SRC Funding LLC, as secured party (together with any successor, the “Specified Creditor”). At the time of such filing no Indebtedness was, and as of the Effective Date, no Indebtedness is, due or owing, whether contingent or otherwise, to the Specified Creditor by any Borrower or their respective Affiliates.

Section 4.22 Investment Company Act. No Borrower is, and after applying the proceeds of the RRIF Loan will not be, required to register as an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and is not “controlled” by a company required to register as an “investment company” under the Investment Company Act of 1940, as amended.

Section 4.23 Financial Statements.

(a) Each Borrower keeps and maintains its records of account, and will issue and continue to issue its Financial Statements in accordance with U.S. GAAP.

(b) The Borrowers have heretofore furnished to the RRIF Lender (i) their consolidated and unconsolidated audited Financial Statements for the Fiscal Year ended December 31, 2021 and (ii) their unaudited consolidated and unconsolidated Financial Statements for the Fiscal Quarter ended September 30, 2023. Such financial statements fairly present the financial position and results of operations of the Borrowers and their consolidated Subsidiaries as of such dates and for such periods in accordance with U.S. GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(c) Since the date of the Application, no event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect.

Section 4.24 Taxes. Each Borrower and each Subsidiary has (a) filed all tax returns required by applicable laws to be filed by it, and (b) paid all income taxes payable by it that have become due pursuant to such tax returns and all other material taxes, assessments fees and other governmental charges payable by it or levied upon its properties that have become due except for (i) those taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by U.S. GAAP and (ii) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 4.25 ERISA.

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Tax Code and other federal or state laws and (ii) each Plan that is intended to be a qualified plan under section 401(a) of the Tax Code has received a favorable determination letter from the Internal Revenue Service of the United States to the effect that the form of such Plan is qualified under section 401(a) of the Tax Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under section 501(a) of the Tax Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Borrowers, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of any Borrower, threatened or contemplated claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) No ERISA Event has occurred, and neither any Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(d) The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount. As of the most recent valuation date for each Multiemployer Plan, the potential liability of the Borrowers or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of section 4203 or section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

(e) To the extent applicable, each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities, except to the extent that the failure so to comply could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. Neither any Borrower nor any Subsidiary has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the Borrowers or any Subsidiary, as applicable, on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan by a material amount, and for each Foreign Plan that is not funded, the obligations of such Foreign Plan are properly accrued.

Section 4.26 Sufficient Funds. The aggregate of (a) all funds that are undrawn under this Agreement, (b) funds currently drawn or available and reserved by the Borrowers for payment of Total Project Costs, and (c) all funds available under any other unused funding that is committed and immediately available to the Borrowers, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

Section 4.27 Class III Railroad Status. Each Borrower is a “Class III Railroad” within the meaning of 49 CFR Part 1201.

Section 4.28 Patriot Act. Each Borrower has established an anti-money laundering compliance program as required by the Patriot Act and is in compliance with the Patriot Act in all material respects.

Section 4.29 Solvency. Each Borrower is Solvent.

Section 4.30 No Bankruptcy of Current Officers and Directors; No Felony Conviction or Securities Law Violation. For the period commencing ten (10) years prior to the Effective Date and ending on the Effective Date:

(a) no current officer or director of any Borrower has been involved in a bankruptcy or similar type proceeding (either in such Person's personal capacity or, to the knowledge of such officer or director, in such Person's capacity of an officer, director or holder of more than 10% of the Equity Interests of any other Person); and

(b) no current officer or director of any Borrower has been convicted of a felony or violation of securities laws.

Section 4.31 Economic and Efficient Use. In accordance with 49 U.S.C. § 22402(g)(3), the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized.

## ARTICLE V

### REPORTING

Section 5.1 Financial Statements.

(a) The Borrowers shall furnish to the RRIF Lender:

(i) as soon as available, but no later than sixty (60) days after the end of each quarter of each Fiscal Year, an unaudited income statement and balance sheet of the Borrowers and each of their respective Subsidiaries, on a combined basis as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrowers and each of their respective Subsidiaries, on a combined basis, for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrowers or any Borrowers' Authorized Representative fairly stating in all material respects the financial condition of the Borrowers as at the end of such period and the results of their operations and their cash flows for such period (subject to normal year-end audit adjustments);

(ii) as soon as available, but no later than one-hundred eighty (180) days after the end of each Fiscal Year, a copy of the audited income statement and balance sheet of the Borrowers or, at the option of the Borrowers, of Holdings and its Subsidiaries (including the Borrowers), on a consolidated and consolidating basis, as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrowers (or Holdings and its Subsidiaries (including the Borrowers)), on a consolidated and consolidating basis, for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrowers and which is reasonably acceptable to the RRIF Lender;

(iii) concurrently with the delivery of the quarterly financial statements referred to in Section 5.1(a)(i) (*Financial Statements*) above,

(A) a duly completed certificate signed by a Borrowers' Authorized Representative certifying as to whether any Event of Default has occurred and, if an Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto;

(B) a duly completed certificate signed by a Borrowers' Authorized Representative setting forth reasonably detailed calculations demonstrating compliance with the Financial Covenant Tests; and

(C) to the extent the Borrowers have failed to satisfy any or all of the Financial Covenant Tests for nine (9) or more consecutive Fiscal Quarters (inclusive of the original Fiscal Quarter with respect to which the Borrowers failed to so satisfy) at the time the quarterly financial statements referred to in Section 5.1(a)(i) (*Financial Statements*) above are delivered, a Financial Covenant Prepayment Schedule for the most recently ended Fiscal Quarter; and

(iv) concurrently with the delivery of the annual financial statements referred to in Section 5.1(a)(ii) (*Financial Statements*) above,

(A) a duly completed certificate signed by a Borrowers' Authorized Representative certifying as to whether any Event of Default has occurred and, if an Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and further setting forth reasonably detailed calculations demonstrating compliance with the Financial Covenant Tests for the annual period subject to such financial statements as and when specified thereon;

(B) a list of all reports or filings that the Borrowers are required to deliver to any other Governmental Authority, and if requested by the RRIF Lender, the Borrowers shall promptly deliver to the RRIF Lender a copy of each such requested report;

(C) upon the request of the RRIF Lender, financial records and other documents detailing the maintenance and inspections performed which demonstrate that the Borrowers have complied with the standards set forth in 49 CFR 260.39;

(D) a written narrative report summarizing all other significant activities and events since the previous delivery of financial statements pursuant to Section 5.1(a)(i) (*Financial Statements*) above that could have a Material Adverse Effect; and

(E) a forecast of the Borrowers' consolidated balance sheet, income statement and cash flows and satisfaction of the Financial Covenants for the following Fiscal Year, in a format acceptable to the RRIF Lender in its reasonable discretion.

(b) U.S. GAAP. All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with U.S. GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

Section 5.2 Notice of Certain Events; Other Information.

(a) Notice of Certain Events. The Borrowers shall, within five (5) Business Days after any Borrower learns of the occurrence, give the RRIF Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(i) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in Exhibit I;

(ii) Events of Default: any Event of Default or any Default or the occurrence of a default under any Construction-Related Contract;

(iii) Litigation: (A) the filing of any litigation, suit or action, or the commencement of any proceeding, against any Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by any Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against any Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, (B) any judgments against any Borrower with award amounts in excess of \$250,000, individually or \$500,000 in the aggregate, and (C) any material notices or filings in respect of any action, petition, suit or proceeding listed in Schedule 4.6;

(iv) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and any Borrower's plans to remedy or mitigate the effects of such failure or delay;

(v) Environmental Notices: any material notice of violation under any Environmental Law or any material changes to the NEPA Determination;

(vi) Insurance Claim: any insurance claims made by a Borrower or a Construction-Related Contract Party in respect of the Project in excess of \$250,000, individually or \$500,000 in the aggregate;

(vii) Material Adverse Effect: any event which could reasonably be expected to cause a Material Adverse Effect;

(viii) ERISA Event: the occurrence of any ERISA Event that, either individually or together with any other ERISA Events, could reasonably be expected to result in liability of a Borrower and its Subsidiaries in an aggregate amount exceeding \$100,000;

(ix) Project Changes: any change to, or any event which could reasonably be expected to result in a material delay to the Projected Substantial Completion Date set forth in the Construction Schedule, which notice shall describe in reasonable detail the event or circumstance

causing such change, the resulting or expected change, and all remedial or corrective actions to be taken by the Borrowers in respect thereof;

(x) Merger, Dissolution, Change of Control or Sale of Assets: the occurrence of any merger, dissolution, Change of Control, or sale of assets pursuant to Section 7.4 (*Merger, Dissolution or Sale of Assets*) of this Agreement;

(xi) 2 CFR Notices: (A) that any of the information set forth in the certificate provided pursuant to Section 3.1 (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of any Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (B) any other notification required pursuant to 2 CFR § 180.350; and (C) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the RRIF Loan as described in 2 CFR § 200.113, and each Borrower shall require its subcontractors to provide it notice of any such violation;

(xii) Non-Compliance with Federal Requirements: the occurrence of any event or circumstance involving a Borrower's failure to comply with (A) any Federal hazardous materials transportation law (49 U.S.C. § 5101 *et seq.*) or regulation promulgated thereunder, or (B) any Federal railroad safety law (including 49 U.S.C. Chapters 201-213), Federal railroad safety regulation (including 49 CFR Parts 200-299), or any applicable orders issued under any laws or regulations governing railroad safety; and

(xiii) Other Adverse Events: any matter or development or the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that has had or could reasonably be expected to result in a Material Adverse Effect.

(b) Copies. The Borrowers shall deliver to the RRIF Lender:

(i) Other Indebtedness: promptly after the furnishing thereof, copies of any material request or notice received by the Borrowers or any Subsidiary from, or given by the Borrowers or any Subsidiary to, any holder of any Indebtedness of any Borrower or any Subsidiary in respect of any default (actual or alleged), waiver or amendment under such Indebtedness; and

(ii) Amendments: copies of (A) any proposed amendments to any Construction-Related Contract or other Related Document at least thirty (30) days prior to the effective date thereof and (B) promptly after the furnishing or receipt thereof, all material communications regarding any material breach or default or event of default on the part of the Borrowers or any other party under any Construction-Related Contract or Related Document.

(c) Other Information. The Borrowers shall deliver to the RRIF Lender promptly such other information regarding the Project or the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrowers or any Subsidiary, or compliance with the terms of the RRIF Loan Documents, as the RRIF Lender may from time to time reasonably request.

Section 5.3 Remedial Action. Within thirty (30) calendar days after any Borrower learns of the occurrence of an event specified in Section 5.2 (*Notice of Certain Events; Other Information*) (other than in Section 5.2(a)(i) (*Substantial Completion*) or Section 5.2(b)(ii) (*Amendments*)),

Borrowers' Authorized Representative shall provide a statement to the RRIF Lender setting forth the actions the Borrowers propose to take with respect thereto.

Section 5.4 Accounting and Audit Procedures; Inspections; Report and Records.

(a) Accounting and Audit Procedures. The Borrowers shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions, so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrowers shall use accounting, audit and fiscal procedures conforming to U.S. GAAP, including, with respect to the RRIF Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the RRIF Loan or any portion thereof shall remain outstanding and until five (5) years after the RRIF Loan shall have been paid in full, the RRIF Lender shall have the right not more often than once a year absent an Event of Default, upon reasonable prior notice, to visit and inspect any of the locations or properties of each Borrower, to examine its books of account and records, to make copies and extracts therefrom at Borrower's expense, and to discuss such Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision each Borrower irrevocably authorizes its independent public accountants to discuss with the RRIF Lender the affairs, finances and accounts of such Borrower, whether or not any representative of such Borrower is present, it being understood that nothing contained in this Section 5.4 (*Accounting and Audit Procedures; Inspections; Reports and Records*) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the RRIF Lender may desire. The Borrowers agree, jointly and severally, to pay all out-of-pocket expenses incurred by the RRIF Lender in connection with the RRIF Lender's exercise of its rights under this Section 5.4 (*Accounting and Audit Procedures; Inspections; Reports and Records*) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrowers shall maintain and retain all files relating to the Project and the RRIF Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the RRIF Note (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the RRIF Loan or this Agreement is finally resolved or, if the RRIF Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the RRIF Lender and the Borrowers. The Borrowers shall provide to the RRIF Lender in a timely manner all records and documentation relating to the Project that the RRIF Lender may reasonably request from time to time.

(d) Required Audit. The Borrowers shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2023 and annually thereafter, except to the extent biennial audits are permitted for the Borrowers pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrowers shall cooperate fully in the conduct of any periodic or compliance audits conducted by the RRIF Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the RRIF Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.



Section 5.5 Financial Reporting.

(a) Financial Reports. The Borrowers shall provide to the RRIF Lender, within sixty (60) days after the Effective Date and annually thereafter not later than one hundred and twenty (120) days after the beginning of each Fiscal Year, (i) the current estimate of the total cost of the Project and the remaining cost to complete the Project, identifying any significant cost changes since the previous report and discussing reasons for and implications of the cost changes; (ii) the current schedule and implementation plan for completing the Project, drawing comparisons between the current schedule and the schedule provided in the Base Case Financial Model and the previous Financial Report and discussing reasons for any differences; (iii) current estimates and sources of funds for the Project, identifying funding changes since the previous Financial Report and discussing reasons for and implications of those changes; (iv) an updated cash flow schedule showing annual cash needs versus available revenue and funding to meet those needs and identifying any potential revenue and funding shortfalls and addressing contingency measures that will or may be taken to address any shortfalls; and (v) a written narrative report on the progress of design, permitting, acquisition and construction of the Project since the Base Case Financial Model and the previous reports under this Section, describing all significant activities concerning Project status including any material matters that may affect the future performance of the Borrowers' obligations under this Agreement. The Financial Reports shall be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrowers shall provide the RRIF Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs, which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Report. The Borrowers' notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the RRIF Lender's security or any Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

**ARTICLE VI**

**AFFIRMATIVE COVENANTS**

The Borrowers covenant and agree, jointly and severally, as follows until the date the RRIF Note and the obligations of the Borrowers under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the RRIF Lender no longer has any commitment to make disbursements to the Borrowers, unless the RRIF Lender waives compliance in writing:

Section 6.1 Copies of Documents. Except as otherwise agreed by the RRIF Lender in writing, the Borrowers will provide to the RRIF Lender copies of fully executed or final documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) within ten (10) days following execution or completion thereof.

Section 6.2 Use of Proceeds. The Borrowers shall use the proceeds of the RRIF Loan for any lawful purpose and as otherwise permitted under this Agreement and the other Related Documents.

Section 6.3 Reserved.

Section 6.4 Prosecution of Work; Verification Requirements.

(a) The Borrowers shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of the Borrowers' industry.

(b) The Borrowers shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(c) The Borrowers shall, and shall require their respective contractors and subcontractors at all tiers for the Project to, comply in all material respects with all applicable federal and state laws. The list of federal laws attached as Exhibit E is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive.

(d) Each Construction-Related Contract, and each contract with contractors and subcontractors contains a provision requiring the counterparty to be in compliance with all applicable laws relating to the Project, including those set forth on Exhibit E, to the extent applicable. To the best of the Borrowers' knowledge, each Construction-Related Contract Party is, and has caused its respective contractors and subcontractors to be, in compliance with all applicable laws relating to the Project, including those set forth on Exhibit E, to the extent applicable.

Section 6.5 Operations and Maintenance.

(a) The Borrowers shall operate the Project (i) in a reasonable and prudent manner and in accordance with good industry practice; (ii) in accordance with requirements of the FRA; and (iii) substantially in accordance with the Financial Reports most recently delivered to the RRIF Lender.

(b) Borrowers shall maintain the Project in good repair, working order and condition and in accordance with the requirements of each applicable Related Document and all applicable laws, including (i) the requirements of 49 U.S.C. § 22402(h)(1)(A) and (B) and § 22402(h)(3)(A) and (ii) the maintenance standards described in 49 CFR 260.39(a) and (b).

(c) The Borrowers shall maintain their other assets and property in good condition, normal wear and tear excepted, and make all necessary repairs and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(d) The Borrowers shall ensure that each Construction-Related Contract Party complies with legal or contractual requirements with respect to any performance security instrument delivered by such Construction-Related Contract Party to the Borrowers and shall ensure that any letter of

credit provided pursuant to any Construction-Related Contract meets the requirements therefor set forth in such Construction-Related Contract.

(e) To the extent that the amount required to be paid by the Borrowers to the Construction-Related Contract Party or its Affiliates under the Construction-Related Contract in respect of fees, costs, expenses and/or any other amounts, whether as contemplated as of the date of this Agreement or as may become due under other circumstances that arise after the date hereof, exceeds Seven Million Eight Hundred Sixty-Six Thousand Three Hundred Twenty and 05/100 Dollars (\$7,866,320.05), Borrowers agree to pay such excess as and when the same become due and payable through equity proceeds of the Borrowers.

Section 6.6 Insurance.

(a) Each Borrower shall, and shall cause each of its Subsidiaries to, insure, or cause to be insured, its assets and property with responsible insurance companies, such insurance coverage as may be required by any law or governmental regulation or court decree or order applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by companies similarly situated, including, without limitation, against claims for losses from fire, casualty, liability and property damage and other events consistent with normal industry practice, or as part of an integrated system with its rail affiliates. Each Borrower will promptly notify the RRIF Lender of any material change in such insurance coverage that departs from normal industry standards.

(b) Neither any Borrower nor any of its Subsidiaries shall use a method or plan of protection that includes self-insurance.

(c) All policies of insurance required under the terms hereof shall:

(i) in the case of property insurance, name the RRIF Lender as loss payee, as its interest may appear;

(ii) in the case of liability insurance, name the RRIF Lender as additional insured;

(iii) require at least thirty (30) days' prior notice of cancellation for any reason to the RRIF Lender;

(iv) waive any right of subrogation of the insurers against the RRIF Lender; and

(v) waive the right of insurers to set-off, to counterclaim or to any other deduction, whether by attachment or otherwise, to the extent of any monies due the RRIF Lender.

(d) If any Borrower is in default of its obligation to maintain the insurance coverage specified herein, the RRIF Lender may, at its option, but shall not be required to, obtain such insurance, and in such event, the Borrowers shall, upon demand from time to time, reimburse the RRIF Lender for the cost of such insurance together with interest thereon at the Default Rate from the date of payment thereof to the date of receipt of such reimbursement.

Section 6.7 Maintain Legal Status. Each Borrower shall at all times do or cause to be done, and shall cause each of its Subsidiaries to do all things necessary to obtain, preserve, renew, extend and keep in full force and effect and in good standing its existence and legal structure, its legal name; and shall further do all things necessary to obtain, preserve, renew, extend and keep in full force and effect and in good standing all the Governmental Approvals, (a) and any other rights, licenses, franchises, and authorizations material to the conduct of its business and (b) all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

Section 6.8 Reserved.

Section 6.9 Compliance with Law. Each Borrower shall and shall cause each of its Subsidiaries to comply in all material respects with all applicable federal and state laws, including (a) all items set forth in Exhibit E, to the extent applicable, and (b) and all federal railroad safety laws and regulations and all orders governing railroad safety issued under any such laws or regulations.

Section 6.10 Material Obligations; Liens. Each Borrower shall and shall cause each of its Subsidiaries to pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all applicable taxes, assessments and governmental charges or levies imposed upon it or in respect of its property, before the same shall become delinquent or in default; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by such Borrower in good faith by appropriate proceedings, so long as such Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by U.S. GAAP, applied on a consistent basis.

Section 6.11 Environmental Matters. Each Borrower will, and will cause each of its Subsidiaries to, (a) comply with all Environmental Laws, (b) obtain, maintain in full force and effect and comply with any permits, licenses or approvals required for the facilities or operations of such Borrower or any of its Subsidiaries, and (c) conduct and complete any investigation, study, sampling or testing, and undertake any corrective, cleanup, removal, response, remedial or other action necessary to identify, report, remove and clean up all Hazardous Materials present or released at, on, in, under or from any of the facilities or real properties of a Borrower or any of its Subsidiaries as required by law.

Section 6.12 SAM Registration. Each Borrower shall (a) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (b) within sixty (60) days prior to each anniversary of the Effective Date, provide to the RRIF Lender evidence of such active registration status with no active exclusions listed in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the RRIF Lender hereunder have been irrevocably paid in full in cash.

Section 6.13 Events of Loss; Loss Proceeds. Each Borrower shall diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of any Event of Loss to its assets. If an Event of Loss shall occur with respect to assets of the Borrowers in excess of \$250,000, the Borrowers shall within thirty (30) days after such event notify the RRIF Lender if the Borrowers elect to fully replace or restore the assets that

suffered such Event of Loss, in which event (a) the Borrowers shall diligently undertake such replacement or restoration and (b) all Loss Proceeds relating to such Event of Loss shall be deposited into an account, established by the Borrowers and pledged to the RRIF Lender, and disbursed from such account upon requisition by the Borrowers to pay the costs of such replacement or restoration. Upon completion of such replacement or restoration and provided no Event of Default shall have occurred and be continuing, all Loss Proceeds remaining in such account shall be disbursed to the Borrowers. If the Borrowers do not elect to fully replace or restore such assets, all Loss Proceeds stemming from such Event of Loss (or such portion of Loss Proceeds not required to effect any partial replacement or restoration elected by the Borrowers) shall be applied in accordance with Section 2.7(a) (*Prepayment*).

Section 6.14 Reserved.

Section 6.15 Cargo Preference Act. Pursuant to 46 CFR Part 381, each Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrowers pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(a) At least 50% of any equipment, materials or commodities procured, contracted for or otherwise obtained with RRIF Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(b) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above shall be furnished to both the RRIF Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

Section 6.16 Lobbying. Each Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

Section 6.17 Further Assurances; Most Favored Nations.

(a) At any time and from time to time upon the request of the RRIF Lender, the Borrowers shall, at their expense, promptly execute, acknowledge and deliver such further documents and do such other acts as the RRIF Lender may reasonably request in order to effect fully the purposes of the RRIF Loan Documents.

(b) In the event the Borrowers shall, directly or indirectly, enter into or otherwise consent to any credit agreement, loan agreement, note purchase agreement, security agreement or similar financing or security instrument (or any amendment, supplement or modification thereto) (an "*Other Credit Facility*") under which or in connection with which, directly or indirectly, any Person undertakes to make loans or extend credit to the Borrowers and with respect to which such agreement (or amendment thereto) provides such Person with more restrictive covenants and/or greater rights and remedies than are provided to the RRIF Lender hereunder as it relates to restrictions on the granting of Liens, such more restrictive covenants shall automatically be deemed to be incorporated into this Agreement and the RRIF Lender shall have the benefits of such more

restrictive covenants and/or such greater rights and remedies as if specifically set forth herein. The Borrowers shall provide the RRIF Lender with a copy of each such agreement (or amendment thereto) which provides such more restrictive covenants and/or greater rights and remedies and, if requested by the RRIF Lender, the Borrowers shall promptly enter into an amendment to this Agreement to include such more restrictive covenants and/or greater rights or remedies (provided that the RRIF Lender shall maintain the benefit of such more restrictive covenants and/or greater rights and remedies even if the Borrowers fails to provide such amendment). The incorporation of more restrictive covenants and/or greater rights and remedies shall continue until there is a termination of the applicable Other Credit Facility.

Section 6.18 Reserved.

Section 6.19 Small and Disadvantaged Businesses.

(a) Each Borrower shall, in connection with the Project, and shall cause its contractors and subcontractors at all tiers for the Project to: (i) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses; and (ii) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.

(b) An example of a best practice under (a)(ii) above would be to incorporate key elements of the USDOT's Disadvantage Business Enterprise (“DBE”) program (see 49 CFR Part 26) in contracts funded under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Borrowers would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by the Borrowers, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design-build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement that, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.

Section 6.20 Reserved.

Section 6.21 Projected Substantial Completion Date. The Borrowers shall notify the RRIF Lender at least three (3) months prior to possible changes to the Projected Substantial Completion Date; provided, however, that no change in the Projected Substantial Completion Date shall be permitted hereunder without the prior written consent of the RRIF Lender.

Section 6.22 Employee Protection.

(a) In accordance with 49 U.S.C. § 22402(h)(3)(A), the Borrowers shall comply with the standards of 49 U.S.C. § 24312 as in effect on September 1, 2002, with respect to the Project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a).

(b) In accordance with 49 U.S.C. § 22402(h)(3)(B), the Borrowers shall make (and shall cause any Subsidiaries to make) fair and equitable arrangements, in accordance with 49 U.S.C. § 22404, to protect the interests of any employees who may be adversely affected by actions pursuant to, or as a consequence of, this Agreement, including the arrangements prescribed by the United States Secretary of Labor on July 6, 1976, and set forth on Exhibit K hereto.

Section 6.23 Domestic Buying Preference. The Borrowers shall comply, and shall require their contractors and subcontractors at all tiers for the Project to comply, with FRA’s “RRIF Buy America” policy, 49 U.S.C. § 22905(a) as applied by policy at 75 Fed. Reg. 60165-66 (Dec. 29, 2010), which follows applicable FRA guidance.

Section 6.24 Buy America.

(a) The Borrowers agree that steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by the FRA. The Borrowers acknowledge that this Agreement is neither a waiver of those provisions nor a finding under them.

(b) The Borrowers agree that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and the FRA. The Borrowers acknowledge that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

## ARTICLE VII

### NEGATIVE COVENANTS

The Borrowers covenant and agree, jointly and severally, as follows until the date the RRIF Note and the obligations of the Borrowers under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the RRIF Lender waives compliance in writing:

Section 7.1 Indebtedness.

(a) Except for Permitted Debt, no Borrower shall, nor shall it permit any of its Subsidiaries to, without the prior written consent of the RRIF Lender, issue or incur any Indebtedness; provided, that the Borrowers, and their Subsidiaries shall not incur any indebtedness of any kind payable from, secured or supported by any assets comprising the Project, including Permitted Debt, without the prior written consent of the RRIF Lender, following the occurrence, and during the continuation, of an Event of Default.

(b) Prior to the incurrence of Permitted Debt described in clauses (c), (d), (g), (i), (j), (k), (l) or (n) of the definition thereof, the Borrowers shall provide to the RRIF Lender a certificate signed by Borrowers’ Authorized Representative, demonstrating to the RRIF Lender’s satisfaction that such proposed indebtedness is authorized pursuant to this Section 7.1 (*Indebtedness*) and satisfies the applicable requirements under the definitions of “Permitted Debt”.

Section 7.2 No Lien Extinguishment or Adverse Amendments. No Borrower shall, nor shall it permit any of its Subsidiaries to, without the prior written consent of the RRIF Lender, to either (a) amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the RRIF Lender (in the RRIF Lender's reasonable determination) in connection with the RRIF Loan; (b) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the RRIF Lender (in the RRIF Lender's determination) in connection with the RRIF Loan; or (c) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Construction-Related Contract except for termination, assignment, amendment, modification or waiver that could not be expected to have a Material Adverse Effect (in the RRIF Lender's determination). Except as otherwise agreed by the RRIF Lender in writing, the Borrowers will provide to the RRIF Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

Section 7.3 No Prohibited Liens. No Borrower shall, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any of their assets or their respective rights therein, except for Permitted Liens.

Section 7.4 Merger, Dissolution or Sale of Assets.

(a) No Borrower will, nor will it permit any of its Subsidiaries to, (i) consolidate or merge with any other Person, or permit any other Person to merge into or consolidate with it, or (ii) liquidate or dissolve except that any Subsidiary of a Borrower may merge into such Borrower in a transaction in which such Borrower is the surviving entity.

(b) No Borrower will, nor will it permit any of its Subsidiaries to, sell, transfer or otherwise dispose of:

(A) any asset constituting the Project; or

(B) any other asset, including any Equity Interests owned by it and any division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), nor will any Borrower permit any of its Subsidiaries to issue any additional Equity Interests in such Subsidiary (other than to a Borrower or another Subsidiary in compliance with Section 7.4(a) (*Merger, Dissolution or Sale of Assets*)) except that the restrictions in this clause (B) shall not apply as follows:

(i) so long as no Default or Event of Default then exists, this clause (B) shall not prohibit the Borrowers or their Subsidiaries from selling or disposing of assets that do not constitute the Project to the extent that the proceeds of such sale or disposition are reinvested in similar replacement assets or, with respect to any obsolete assets, upgraded assets useful to the Business, within one hundred twenty (120) days thereof;

(ii) sales, transfers and dispositions of Inventory or equipment in the ordinary course of business;



(iii) subject to Section 7.23 (*Prohibited Interest*), sales, transfers and dispositions of assets to another Borrower;

(iv) dispositions resulting from a transaction permitted by Section 7.4(a) (*Merger, Dissolution or Sale of Assets*);

(v) sales, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business and consistent with past practices;

(vi) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of a Borrower or any Subsidiary; or

(vii) so long as no Default or Event of Default then exists, sales, transfers and dispositions of assets that are not permitted by any other clause of this Section 7.4(b) (*Merger, Dissolution or Sale of Assets*), provided that the aggregate fair market value of all assets sold, transferred or disposed of in reliance upon this subsection (vii) shall not exceed \$100,000 during any Fiscal Year of the Borrowers.

Section 7.5 Restricted Payments; Payments of Indebtedness.

(a) No Borrower will, nor will it permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(i) each Subsidiary of a Borrower may declare and make Distributions to such Borrower;

(ii) the Borrowers and each of their Subsidiaries may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person; provided, however, that such payments shall not conflict with 49 U.S.C. § 22402(h)(1)(C);

(iii) so long as no Default or Event of Default exists or would result therefrom, the Borrowers may purchase from employees, former employees, directors or former directors (or permitted transferees thereof) Equity Interests in the Borrowers issued under the Borrowers' incentive plans; provided that the aggregate purchase price for all such purchases by the Borrowers during any Fiscal Year shall not exceed \$250,000;

(iv) following (1) Substantial Completion, (2) the commencement of cash pay interest following the end of the Capitalized Interest Period and (3) upon the earlier of (y) full disbursement of the RRIF Loan or (z) the date on which draws under the RRIF Loan are no longer available and the Debt Service Payment Commencement Date has occurred, the Borrowers may declare or pay Distributions to Holdings or other Restricted Payments in respect of Indebtedness owed to Holdings or in respect of any SNR Shareholder Loan or the Mendocino Shareholder Loan, in each case, on a quarterly basis within ten (10) Business Days following the Borrowers' delivery of true, correct and complete copies of the certificates required to be delivered pursuant to

Section 5.1(a)(iii) of this Agreement (together with the financial statements delivered pursuant to Section 5.1(a)(i) accompanying such certificates) to the extent that, at the time of such Distribution:

(A) no Default or Event or Default has occurred and is continuing, or would occur as a result of the making of such Distributions or Restricted Payments;

(B) both immediately before and after giving effect to any such Distribution on a pro forma basis, the Borrowers shall be in compliance with the Financial Covenant Tests; and

(C) both immediately before and after giving effect to any such Distribution or Restricted Payment on a pro forma basis, (x) the Borrowers shall have a minimum Consolidated Fixed Charge Coverage Ratio of at least equal to 1.25:1.00 and (y) the Consolidated Total Leverage Ratio shall not be in excess of the Consolidated Total Leverage Ratio then as set forth in the definition of Financial Covenant Tests, and (z) the total balances of unrestricted cash of the Borrowers shall not be less than the Minimum Cash Balance Amount, in each case, measured as of the most recently ended Fiscal Quarter;

in each case as set forth in reasonable detail in the certificates of the Chief Financial Officer of the Borrowers delivered to the RRIF Lender pursuant to Section 5.1(a)(iii) giving pro forma effect to any such Distribution or Restricted Payment;

(v) following (1) Substantial Completion, (2) the commencement of cash pay interest following the end of the Capitalized Interest Period and (3) upon the earlier of (y) full disbursement of the RRIF Loan or (z) the date on which draws under the RRIF Loan are no longer available and the Debt Service Payment Commencement Date has occurred, the Borrowers may make Restricted Payments to satisfy Acquisition Liabilities, either directly or through Distributions made to Holdings to enable Holdings to make payments in respect of Acquisition Liabilities, to the extent that, at the time of such Restricted Payment:

(A) no Default or Event or Default has occurred and is continuing, or would occur as a result of the making of such Restricted Payment;

(B) both immediately before and after giving effect to any such Distribution on a pro forma basis, the Borrowers shall be in compliance with the Financial Covenant Tests; and

(C) both immediately before and after giving effect to any such Restricted Payment on a pro forma basis, (x) the Borrowers shall have a minimum Consolidated Fixed Charge Coverage Ratio of at least equal to 1.25:1.00 and (y) the Consolidated Total Leverage Ratio shall not be in excess of the Consolidated Total Leverage Ratio then required as set forth in the definition of Financial Covenant Tests, and (z) the total balances of unrestricted cash of the Borrowers shall not be less than the Minimum Cash Balance Amount, in each case, measured as of the most recently ended Fiscal Quarter;

(D) the RRIF Lender shall have received evidence satisfactory to it in its sole discretion that such Acquisition Liabilities have become due and payable on or around that date on which such Restricted Payment is proposed to be made;

in each case as set forth in reasonable detail in the certificates of the Chief Financial Officer of the Borrowers delivered to the RRIF Lender pursuant to Section 5.1(a)(iii) giving pro forma effect to any such Restricted Payment;

(vi) the Borrowers and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the cash proceeds received from the substantially concurrent issue of new common Equity Interests; and

(vii) so long as no Default or Event of Default exists or would result therefrom, the Borrowers may declare and make Distributions to Holdings to the extent necessary to permit Holdings (or the equity holders of Holdings) to discharge the tax liabilities of Holdings and its members incurred as a result of income attributable to the Borrowers, in each case so long as Holdings and such members apply the amount of any such Distribution payments for such purpose;

provided, however, that such payments shall not conflict with 49 U.S.C. § 22402(h)(1)(C).

(b) No Borrower will, nor will it permit any of its Subsidiaries to, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness (including Subordinated Indebtedness or Permitted Debt set forth in clause (k) of the definition thereof), except that, so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(i) prepayments of Indebtedness created under the RRIF Loan Documents;

(ii) prepayments of Indebtedness owed to any other Borrower;

(iii) payment of secured Indebtedness permitted hereunder that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; and

(iv) Restricted Payments permitted by Section 7.5(a)(iv) (*Restricted Payments; Payments of Indebtedness*) and Section 7.5(a)(v) (*Restricted Payments; Payments of Indebtedness*).

Section 7.6 Investments. No Borrower will, nor will it permit any of its Subsidiaries to, make, hold or acquire (including pursuant to any merger) any Investment in any Person except:

(a) Permitted Investments;

(b) Investments by the Borrowers and their respective Subsidiaries in their Subsidiaries outstanding on the date hereof;

(c) Investments existing on the date hereof and described in Schedule 7.6;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; and

(e) following (1) Substantial Completion, (2) the commencement of cash pay interest following the end of the Capitalized Interest Period and (3) upon the earlier of (y) full disbursement of the RRIF Loan or (z) the date on which draws under the RRIF Loan are no longer available and the Debt Service Payment Commencement Date has occurred, the Borrowers may make Permitted Acquisitions to the extent the total consideration paid in connection therewith would otherwise be available as Distributions under Section 7.5(a)(iv) (*Restricted Payments; Payments of Indebtedness*) after applying the conditions applicable to such Distributions set forth in such Section.

Section 7.7 Transactions with Affiliates. No Borrower will, nor will it permit any Subsidiary to, enter into any transaction of any kind with any Affiliate of a Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially at least as favorable to a Borrower or such Subsidiary as would be obtainable by such Borrower or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to (a) Distributions permitted by Section 7.5 (*Restricted Payments; Payments of Indebtedness*), (b) Investments permitted by Section 7.6 (*Investments*), (c) transactions between the Borrowers and their Subsidiaries entered into in the ordinary course of business and consistent with past practices and (d) transactions described in Schedule 7.6.

Section 7.8 Restrictive Agreements. No Borrower will, nor will it permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Borrower or any other Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets; or (b) the ability of any Subsidiary to make Distributions to, to make or repay loans or advances to, or to transfer assets to, a Borrower or to guarantee Indebtedness of the Borrowers; provided that: (i) the foregoing shall not apply to restrictions and conditions imposed by any RRIF Loan Document; (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder; (iii) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness; and (iv) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

Section 7.9 Conduct of Business; Deployment of Assets.

(a) No Borrower will, nor will it permit any of its of its Subsidiaries to, engage in any business other than the Business as conducted on the Effective Date and businesses reasonably related or complementary thereto.

(b) No Borrower will, nor will it permit any of its Subsidiaries to, at any time appropriate, use or retain assets generated in the operation of the Business, for any purpose not directly related to the Business if such use would impair the ability of a Borrower and its Subsidiaries to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of any Borrower to perform any of its obligations under any RRIF Loan Document, all in accordance with 49 U.S.C. § 22402(h)(1)(A).

(c) Each Borrower will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis, and will require the same of its Subsidiaries, all in accordance with 49 U.S.C. § 22402(h)(1)(B).

Section 7.10 Reserved.

Section 7.11 Reserved.

Section 7.12 No Prohibited Sale, Lease or Assignment. No Borrower shall, nor shall it permit any of its Subsidiaries to (a) sell, lease, or assign its rights in and to the Project, a substantial portion of the assets included in the Project, or its rights and obligations under any Related Document, in each case unless such sale, lease or assignment (i) could not reasonably be expected to result in a Material Adverse Effect, and (ii) is made by the Borrowers in the ordinary course of business or (b) without the express written consent of the RRIF Lender, divide pursuant to §18-217 of the Delaware Limited Liability Company Act.

Section 7.13 Organizational Documents; Fiscal Year. No Borrower shall, nor shall it permit any of its Subsidiaries to, at any time amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature or an amendment that could not be expected to be adverse to the interests of the RRIF Lender) or adopt any fiscal year other than Fiscal Year without the prior written consent of the RRIF Lender.

Section 7.14 Reserved.

Section 7.15 No Payment with Federal Funds. The Borrowers shall not pay any portion of RRIF Debt Service nor any other amount to the RRIF Lender or to the Federal Government pursuant to the RRIF Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrowers may prepay the RRIF Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 2.7 (*Prepayment*).

Section 7.16 Change in Legal Structure; Mergers and Acquisitions. No Borrower shall, nor shall it permit any of its Subsidiaries to, and shall not agree, nor permit any of its Subsidiaries to agree to:

(a) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person, other than (A) purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures, each in the ordinary course of business and (B) to the extent permitted under Section 7.6 (*Investments*) hereof, Permitted Acquisitions; or

(b) reorganize, including a division into two or more limited liability companies pursuant to §18-217 of the Delaware Limited Liability Company Act, consolidate with, or merge into another Person unless the Borrowers provide to the RRIF Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the RRIF Lender and in accordance with Section 7.4(a) (*Merger, Dissolution or Sale of Assets*) herein. The documents authorizing any

reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the RRIF Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which any Borrower is a party. In addition, the Borrowers shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the RRIF Lender.

Section 7.17 OFAC Compliance. No Borrower:

(a) shall, nor shall it permit any of its Subsidiaries to, violate (i) any applicable Anti-Money Laundering Laws, (ii) any applicable Sanctions, (iii) Anti-Corruption Laws or (iv) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(b) shall use the proceeds of the RRIF Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents and the Construction-Related Contracts;

(c) shall not make a payment, directly or indirectly, to any Construction-Related Contract Party that (1) to such Borrower's knowledge, has violated any of the laws referenced in Section 7.17 (*OFAC Compliance*) or (2) is a Sanctioned Person; or

(d) shall procure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the RRIF Loan or lend to, make any payment to, contribute or otherwise make available any funds to any Affiliate, joint venture partner or other Person (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (ii) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (iii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iv) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the RRIF Lender or any Construction-Related Contract Party).

Section 7.18 Hedging. Other than a Hedging Transaction expressly permitted or required hereunder, no Borrower shall, nor shall it permit any of its Subsidiaries to, enter into a Hedging Transaction without the prior written consent of the RRIF Lender.

Section 7.19 Discontinuance or Abandonment of Business. No Borrower will, nor will it permit any of its Subsidiaries to, except as permitted by Section 7.4 (*Merger, Dissolution or Sale of Assets*), discontinue or abandon its entire Business or any substantial part of its Business.

Section 7.20 Abandonment of Rail Line or Operation. Except as required by applicable law, no Borrower will (a) abandon or file an application with the STB for the abandonment of the Rail Line or (b) abandon railway service by such Borrower.

Section 7.21 Salaries of Officers. During the ten (10)-year period following the date hereof, any Officer of a Borrower or any of its Subsidiaries that has been paid a salary prior to the date hereof and that owns more than ten percent (10%) of the total Equity Interests in such Borrower

or any of its Subsidiaries shall not be paid a salary at a yearly rate that is greater than the amount paid during the first full fiscal year immediately preceding the date hereof plus an adjustment not to exceed ten percent (10%) per year.

Section 7.22 ERISA Compliance. No Borrower will at any time to the extent that any of the following could reasonably be expected to have a Material Adverse Effect:

(a) engage in, or permit any ERISA Affiliate to engage in, any transaction in connection with which such Borrower or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Tax Code; or

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, such Borrower or any ERISA Affiliate is required to pay as contributions thereto.

Section 7.23 Prohibited Interest. No Borrower will, nor will it permit any of its Subsidiaries to:

(a) enter into any contract, subcontract, or arrangement in excess of \$100,000 (other than for personal employment) in connection with the financing of, or the carrying out of, work related to the Project to be performed under this Agreement in which any officer or director of any Borrower during his or her subsequent tenure or more recently than two (2) years before the date of such contract (if his or her tenure is continuing) shall have or shall have had any personal interest, direct or indirect, in the other party to such contract, subcontract or arrangement unless such contract is entered into on a publicly advertised, sealed-bid basis, the recipient is the lowest qualified bidder on such basis, such officer or director recuses himself or herself from further dealings with respect to such contract, subcontract or arrangement, and written records of the entire transactions are sufficient to satisfy the RRIF Lender upon inspection;

(b) knowingly allow any contractor or subcontractor of any Borrower to enter into any contract, subcontract, or other arrangement in excess of \$100,000 (other than for personal employment) related to the Project to be performed under this Agreement if any of its officers or directors or any members of the immediate family or one of the foregoing has any material interest in the contract, subcontract or arrangement, unless the other party (or parties) to such contract, subcontract or arrangement is the lowest qualified bidder on a publicly advertised, sealed-bid basis and written records of the entire transaction are sufficient to satisfy the RRIF Lender upon inspection;

(c) allow any member of or delegate to Congress to share any benefit that may arise from this Agreement; provided that this provision shall not restrict the making of any contract with a publicly held entity for the general benefit of such entity; or

(d) pay any full-time employee of the Federal Government any consulting fees, salaries, or travel expenses (unless on leave without pay) from any federal funds provided under this Agreement except where specifically authorized by statute.

## ARTICLE VIII

### INDEMNIFICATION

Section 8.1 Indemnification. The Borrowers shall, jointly and severally, indemnify the RRIF Lender and any official, employee, advisor, consultant, agent or representative of the RRIF Lender (each such Person being herein referred to as an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the RRIF Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrowers shall be entitled, at their expense, to participate in the defense thereof; provided, that such Indemnitee has the right to retain its own counsel, at the Borrowers’ expense, and such participation by the Borrowers in the defense thereof shall not release any Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 8.1 (*Indemnification*) is made shall be entitled, after consultation with the Borrowers and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrowers for purposes of this Section 8.1 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither any Borrower nor the RRIF Lender shall assert, and each of the Borrowers and the RRIF Lender hereby waives, any claim against any Indemnitee or the Borrowers, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the RRIF Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit any Borrower’s indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 8.1 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrowers under this Section 8.1 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 8.1 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrowers hereunder or thereunder.



## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default. An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(a) Payment Default. The Borrowers shall fail to pay any of the principal amount of or interest on the RRIF Loan (including RRIF Debt Service required to have been paid pursuant to the provisions of Section 2.6 (*Payment of Principal and Interest*) or any mandatory prepayment required pursuant to the provisions of Section 2.7(a) (*Prepayment*)) when and as the payment thereof shall be required under this Agreement or the RRIF Note or on the Final Maturity Date (each such failure under this clause (a), a “**Payment Default**”).

(b) Covenant Default.

(i) The Borrowers shall fail to (y) observe or perform any covenant, agreement or obligation of the Borrowers under Section 5.1 (*Financial Statements*) or Article VII (*Negative Covenants*) or (z) satisfy any of the Financial Covenant Tests for thirteen (13) consecutive Fiscal Quarters and no payment necessary to cause a Financial Covenant Cure with respect to such thirteenth (13<sup>th</sup>) Fiscal Quarter shall have been made in accordance with Section 2.7(a)(iv) (*Mandatory Prepayments*).

(ii) Any Borrower shall fail to observe or perform any other covenant, including Article VI (*Affirmative Covenants*), agreement or obligation of such Borrower under this Agreement, the RRIF Note or any other RRIF Loan Document (other than in the case of any Payment Default, covenant default under Section 9.1(b)(i) (*Events of Default*) or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by such Borrower from the RRIF Lender of written notice thereof, or (B) such Borrower’s knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 9.1(b)(ii) (*Events of Default*), and such thirty (30) day cure period shall be extended by up to 150 additional days, if and so long as (x) within such thirty (30) day cure period the Borrowers shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within 180 days after the date specified in either (A) or (B) above, as applicable.

(c) Development Default. A Development Default shall occur, in which case the RRIF Lender may (i) suspend the disbursement of RRIF Loan proceeds under this Agreement and (ii) pursue such other remedies as provided in this Section 9.1 (*Events of Default*).

(d) Misrepresentation Default. Any representation, warranty or certification made by Borrowers in, or delivered pursuant to, any RRIF Loan Document (or in any certificates delivered by the Borrowers in connection with the RRIF Loan Documents) proves to be false or misleading in any material respect as of the date made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect), or any statement, certificate or information furnished to the RRIF Lender by or on behalf of Borrowers

in connection with any RRIF Loan Document proves to be untrue or incomplete in any material respect, as of the date on which the things therein set forth were stated or certified; provided that no Event of Default shall be deemed to have occurred under this Section 9.1(d) (*Misrepresentation Default*) if and so long as:

- (i) such misrepresentation is not intentional;
- (ii) such misrepresentation is not a misrepresentation in respect of Section 4.8 (*No Debarment*), Section 4.10 (*Compliance with Federal Requirements*), Section 4.15 (*OFAC; Anti-Corruption Laws*), or Section 4.28 (*Patriot Act*);
- (iii) in the reasonable determination of the RRIF Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;
- (iv) in the reasonable determination of the RRIF Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;
- (v) the underlying issue giving rise to the misrepresentation is cured by the Borrowers within thirty (30) days from the date on which the Borrowers first became aware (or reasonably should have become aware) of such misrepresentation; and
- (vi) the Borrowers diligently pursue such cure during such thirty (30) day period.

(e) Cross Default.

(i) Any of the representations, warranties or certifications of a Borrower made in or delivered pursuant to the RRIF Loan Documents, or made in or delivered pursuant to the documents under which any senior Obligation or pari passu Obligation is created or incurred (the “**Other Loan Documents**”), shall prove to be false or misleading in any material respect (each an “**Other Indebtedness Misrepresentation Default**”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of a Borrower under the RRIF Loan Documents or the Other Loan Documents, and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the RRIF Loan Documents or the Other Loan Documents (as the case may be) with respect to such default (each an “**Other Indebtedness Covenant Default**”), if the effect of such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of the senior Obligations or the pari passu Obligations (as the case may be), and, in the case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default, the Borrowers shall have failed to cure such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such senior Obligations or pari passu Obligations; and

(ii) Any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, or to cause an offer to prepay,

repurchase, redeem or defease such Material Indebtedness to be made, prior to its scheduled maturity.

(f) Judgments. One or more judgments (i) for the payment of money in an aggregate amount in excess of \$1,000,000 which is not otherwise covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (ii) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrowers (individually or in the aggregate) or any of their Subsidiaries, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrowers or any of their Subsidiaries to enforce any such judgment.

(g) Change in Control. A Change in Control occurs without the prior written consent of the RRIF Lender.

(h) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to any Borrower or any of its Subsidiaries or any Construction-Related Contract Party.

(i) Business Cessation or Abandonment. Any Borrower shall cease to operate on a continuing basis its Business for a period of sixty (60) consecutive days (unless such cessation shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrowers and which the Borrowers could not reasonably have avoided or mitigated) or file an application with the STB for the abandonment of all or a substantial portion of its Business or the Rail Line.

(j) Invalidity of RRIF Loan Documents. Any RRIF Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any Borrower contests in any manner the validity or enforceability of any RRIF Loan Document to which it is a party or denies it has any further liability under any RRIF Loan Document to which it is a party, or purports to revoke, terminate or rescind any RRIF Loan Document to which it is a party.

(k) Reserved.

(l) Cessation of Operations or of the Project. (i) Operation of any Borrower's Business or (ii) a material portion of the operation of such Borrower or any portion that is necessary for passenger or other rail operations or construction of the Project shall cease for a continuous period of not less than 180 days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the Borrowers (and which the Borrowers could not reasonably have avoided or mitigated) and the Borrowers shall either be self-insured in an amount sufficient to cover, or shall have in force an insurance policy or policies under which the Borrowers are entitled to recover amounts sufficient to pay (and may use such amounts to pay) all RRIF Debt Service and costs and expenses of the Borrowers during such cessation of operations.

(m) ERISA Event. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of the Borrowers (individually or in the aggregate) or any of their Subsidiaries under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the Pension Benefit Guaranty Corporation in an aggregate amount in excess of \$1,000,000.

(n) Material Adverse Effect. Any event or condition occurs that would reasonably be expected to result in a Material Adverse Effect.

## Section 9.2 Remedies.

(a) Bankruptcy Related Event. Upon the occurrence of any Bankruptcy Related Event with respect to any Borrower, all obligations of the RRIF Lender hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan shall automatically be deemed terminated, and the Outstanding RRIF Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the RRIF Note or the other RRIF Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(b) Development Default. If so requested by the RRIF Lender, upon the occurrence of an Event of Default described in Section 9.1(c) (*Development Default*), the Borrowers shall immediately repay any unexpended RRIF Loan proceeds previously disbursed to the Borrowers.

(c) Termination of Commitment and Acceleration upon Other Event of Defaults. Upon the occurrence of any other Event of Default, the RRIF Lender, by written notice to the Borrowers, may: (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the RRIF Loan; and (ii) declare the unpaid principal amount of the RRIF Note to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the RRIF Note or the other RRIF Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Other Remedies. Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the RRIF Note or the other RRIF Loan Documents, and may prosecute any such judgment or final decree against the Borrowers and collect in the manner provided by law out of the property of the Borrowers the moneys adjudged or decreed to be payable, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrowers under this Agreement, the RRIF Note or the other RRIF Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrowers under this Agreement, the RRIF Note or the other RRIF Loan Documents.

(e) Suspension and Debarment. Whenever any Event of Default hereunder shall have occurred and be continuing, the RRIF Lender may suspend or debar the Borrowers, Subsidiaries or Affiliates from further participation in any Federal Government program administered by the RRIF Lender and to notify other departments and agencies of such default.

(f) Remedies Not Exclusive. No remedy conferred herein or reserved to the RRIF Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

(g) Delay or Omission Not Waiver. No delay or omission of the RRIF Lender to exercise any right or remedy provided hereunder upon a default of the Borrowers (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the RRIF Lender may be exercised from time to time, and as often as may be deemed expedient by the RRIF Lender.

(h) Survival. No action taken pursuant to this Section 9.2 (*Remedies*) shall relieve Borrowers from their obligations pursuant to this Agreement, the RRIF Note or the other RRIF Loan Documents, all of which shall survive any such action.

## ARTICLE X

### ASSIGNMENT

Section 10.1 Sale of RRIF Loan. The RRIF Lender shall not sell the RRIF Loan at any time prior to the Substantial Completion Date. After such date, the RRIF Lender may sell the RRIF Loan to another entity or reoffer the RRIF Loan into the capital markets only in accordance with the provisions of this Section 10.1 (*Sale of RRIF Loan*). Such sale or reoffering shall be on such terms as the RRIF Lender shall deem advisable. However, in making such sale or reoffering the RRIF Lender shall not change the terms and conditions of the RRIF Loan without the prior written consent of the Borrowers in accordance with Section 11.7 (*Amendments and Waivers*). The RRIF Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the RRIF Loan, written notice to the Borrowers of the RRIF Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 10.1 (*Sale of RRIF Loan*) shall not (x) obligate the RRIF Lender to sell nor (y) provide the Borrowers with any rights or remedies in the event the RRIF Lender, for any reason, does not sell the RRIF Loan.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 No Personal Recourse. No official, employee or agent of the RRIF Lender or the Borrowers or any Person executing this Agreement or any of the other RRIF Loan Documents shall be personally liable on this Agreement or such other RRIF Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 11.2 No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrowers, the Federal Government, or the RRIF Lender, solely by virtue of the RRIF Loan, and each Borrower agrees to indemnify and hold the RRIF Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 8.1 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the RRIF Loan, and that no third party creditor or creditors of the Borrowers shall have any right against the RRIF Lender with respect to the RRIF Loan made pursuant to this Agreement.

Section 11.3 Borrowers' Authorized Representative. The Borrowers shall at all times have appointed a Borrowers' Authorized Representative by designating such Person or Persons from time to time to act on Borrowers' behalf pursuant to a written certificate furnished to the RRIF Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by each Borrower. Solely for purposes of the delivery of incumbency certificates and certified Organizational Documents and resolutions pursuant to Section 3.1(p) (*Conditions Precedent to Effectiveness*), Borrowers' Authorized Representative may be the secretary or assistant secretary of the Borrowers. Any document delivered hereunder that is signed by Borrowers' Authorized Representative shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of the Borrowers and such Person shall be conclusively presumed to have acted on behalf of the Borrowers.

Section 11.4 RRIF Lender's Authorized Representative.

(a) The RRIF Lender shall at all times have appointed the RRIF Lender's Authorized Representative by designating such Person or Persons from time to time to act on the RRIF Lender's behalf pursuant to a written certificate furnished to the Borrowers and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the RRIF Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, and the further delegation of authority, dated August 31, 2016 (the "**Delegation**"), the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the RRIF Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the RRIF Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 11.5 Servicer. The RRIF Lender may from time to time designate another entity or entities to perform, or assist the RRIF Lender in performing, the duties of the Servicer or specified duties of the RRIF Lender under this Agreement and the RRIF Note. The RRIF Lender shall give the Borrowers written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the RRIF Lender shall be deemed to be a reference to the Servicer with respect to any duties which the RRIF Lender shall have delegated to such Servicer. The RRIF Lender may at any time assume the duties of any Servicer under this Agreement and the RRIF Note. The Borrowers shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 11.6 Fees and Expenses.

The Borrowers agree, jointly and severally, whether or not the transactions hereby contemplated shall be consummated, to reimburse the RRIF Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the RRIF Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses related to its collateral re-assessments and of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other RRIF Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(a) the enforcement of or attempt to enforce any provision of this Agreement or any of the other RRIF Loan Documents;

(b) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under, this Agreement, any other Related Document, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the RRIF Lender thereunder; and

(c) any work-out, restructuring, or similar arrangement of the obligations of the Borrowers under this Agreement or the other RRIF Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrowers under this Section 11.6 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the RRIF Note, the enforcement of any provision of this Agreement or the other RRIF Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 11.7 Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 11.8 Governing Law and Venue.

(a) This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State of California, if and to the extent such federal laws are not applicable.

(b) Each Borrower irrevocably and unconditionally agrees that it will not commence any action involving the RRIF Lender or any RRIF Loan Document in any forum other than a Federal Court sitting in the District of Columbia, and any appellate court therefrom, and each of the parties hereto, to the fullest extent permitted by applicable law, irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action may be heard and determined in such courts. Each of the parties hereto agrees that a final judgment in any such action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall

affect any right that the RRIF Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other RRIF Loan Document against any Borrower or its properties in the courts of any jurisdiction. Each Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection that it may have to the laying of venue of any action arising out of or relating to this Agreement or any other Loan Document in any court referred to in this Section 11.8(b) (*Governing Law and Venue*). Each of the parties hereto hereby irrevocable waives, to the fullest permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action in any such court.

Section 11.9 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 11.10 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. No Borrower's rights or obligations hereunder nor any interest therein may be assigned, delegated, or transferred by any Borrower without the prior written consent of the RRIF Lender.

Section 11.11 Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 11.12 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 11.12 Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) e-mail, in each case to:

<u>If to RRIF Lender:</u>	Build America Bureau United States Department of Transportation Room W12-464 1200 New Jersey Avenue, SE Washington, D.C. 20590 Attention: Director, Office of Credit Programs E-mail: BureauOversight@dot.gov
---------------------------	---



with copies to: Federal Railroad Administration  
Office of Regional Outreach and Project Delivery (RRD-50)  
Sacramento, CA 95814  
Attention: Juliana Barnes, PMP  
Chief, Southwest Division (RRD-56)  
Phone: 916-215-9115

If to Borrowers: Sierra Northern Railway  
1745 Enterprise Blvd.  
West Sacramento, California 95691  
Attention: Kennan H. Beard III, President  
E-mail: kbeard@sierrarailroad.com

Mendocino Railway  
100 West Laurel Street  
Fort Bragg, California 95437  
Attention: Robert Pinoli, President  
E-mail: RJPinoli@SierraRailroad.com

Unless otherwise instructed by the RRIF Lender's Authorized Representative, all notices to the RRIF Lender should be made by e-mail to the e-mail address noted above for the RRIF Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrowers' Authorized Representative, with respect to notices to the Borrowers, or by the RRIF Lender's Authorized Representative, with respect to notices to the RRIF Lender. The Borrowers shall make any payments hereunder or under the RRIF Note in accordance with Section 2.6(d) (*Payment of Principal and Interest*) and the payment instructions hereafter provided by the RRIF Lender's Authorized Representative, as modified from time to time by the RRIF Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 11.12 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by e-mail, when such e-mail is delivered to the address specified in this Section 11.12 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. (Eastern Time) on a Business Day will be deemed to be effective on the next Business Day.

Section 11.13 Effectiveness. This Agreement shall be effective on the Effective Date.

Section 11.14 Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrowers of the Outstanding RRIF Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 8.1 (*Indemnification*), the reporting and record keeping requirements of Section 5.4(b) (*Accounting and Audit Procedures; Inspections; Reports and Records*) and Section 5.4(c) (*Accounting and Audit Procedures; Inspections; Reports and Records*), and the payment requirements of Section 11.6 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 11.15 Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

Section 11.16 Joint and Several Liability. Each obligation and liability of each Borrower to the RRIF Lender, including, without limitation, the Obligations, are the joint and several obligations of each Borrower, and the RRIF Lender may proceed directly against any Borrower, or both of the Borrowers, or all of the foregoing, or any one of the foregoing or any combination of the foregoing, without first proceeding against a Borrower, or without joining all Persons liable or potentially liable for any portion of the Obligations in one action. Each Borrower shall be jointly and severally liable as primary obligor and not merely as surety for repayment of all Obligations arising under the RRIF Loan Documents. Such joint and several liability shall apply to each Borrower regardless of whether any RRIF Loan was only requested by or on behalf of or made to the other Borrower or the proceeds of any RRIF Loan were used only by or on behalf of the other Borrower or any indemnification obligation or any other obligation arose only as a result of the action of the other Borrower. If any Borrower makes a payment in respect of the Obligations hereunder and under the other RRIF Loan Documents, it shall have the rights of contribution described in this Section 11.16 below against the other Borrower; provided that such Borrower shall not exercise its right of contribution until all of the Obligations are fully and indefeasibly paid and satisfied, and the commitments hereunder are terminated, and the RRIF Lender has no further obligation to extend credit to or for the account of any Borrower; provided, however, that the RRIF Lender is hereby granted a Lien in such right of contribution and may enforce such right upon the occurrence and during the continuance of an Event of Default.

[Remainder of page intentionally left blank; signature page follows]

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

**BORROWERS:**

**MENDOCINO RAILWAY**

By:   
Name: Robert Jason Pinoli  
Title: President

**SIERRA NORTHERN RAILWAY**

By:   
Name: Kennan H. Beard III  
Title: President

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and through the  
Executive Director of the Build America Bureau

By:   
Name: Dr. Morteza Farajian  
Title: Executive Director

Document received by the CA 1st District Court of Appeal.

**SCHEDULE I**  
**PROJECT BUDGET**

[See Attached]

Document received by the CA 1st District Court of Appeal.

Mendocino Project		Miles	Ties	Line Rail	Trackwork	Improve ROW	Mendocino	Admin	Planning	Contingent	Mendocino
Type	Costs:	\$	260	\$			Subtotal				Total Cost
				600							
Willits Block	Track Impv.	7.4	5,119	299	\$ 1,509,975	\$ 452,993	\$ 1,962,968	\$ 49,074	\$ 49,074	\$ 98,148	\$ 2,159,264
Noyo Cyn Block (Tunnel #1)	Track Impv.	29.1	23,360	1,604	\$ 7,035,935	\$ 7,510,781	\$ 14,546,716	\$ 363,668	\$ 363,668	\$ 727,336	\$ 16,001,387
Fort Bragg Block	Track Impv.	3.5	3,620	230	\$ 1,078,965	\$ 323,690	\$ 1,402,655	\$ 35,066	\$ 35,066	\$ 70,133	\$ 1,542,920
Mill Site Block	Track Impv.	-	-	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bridge Rehabilitation	Bridge	-	-	-	\$ 675,000	\$ -	\$ 675,000	\$ 16,875	\$ 16,875	\$ 33,750	\$ 742,500
Rolling stock, locomotives	Rolling Stock	-	-	-	\$ -	\$ -	\$ 950,000	\$ 23,750	\$ 23,750	\$ 47,500	\$ 1,045,000
		<b>40.0</b>	<b>32,098</b>	<b>2,132</b>	<b>\$ 10,299,875</b>	<b>\$ 8,287,463</b>	<b>\$ 19,537,338</b>	<b>\$ 488,433</b>	<b>\$ 488,433</b>	<b>\$ 976,867</b>	<b>\$ 21,491,071</b>

  

Sierra Northern Project		Miles	Ties	Siding*	Trackwork	Improve ROW	Sierra Northern	Admin	Planning	Contingent	Sierra Northern
Type	Costs:	\$	260	\$			Subtotal				Total Cost
				600							
Langworth Siding	Track Impv.	1.77	5,960	358	\$ 2,441,067	\$ -	\$ 2,441,067	\$ 61,027	\$ -	\$ 122,053	\$ 2,624,147
Wamble Siding	Track Impv.	1.2	4,040	242	\$ 1,654,961	\$ -	\$ 1,654,961	\$ 41,374	\$ -	\$ 82,748	\$ 1,779,083
Fogarty Siding	Track Impv.	2.0	6,734	404	\$ 2,758,268	\$ -	\$ 2,758,268	\$ 68,957	\$ -	\$ 137,913	\$ 2,965,138
Warnerville Siding	Track Impv.	1.7	5,724	343	\$ 2,344,527	\$ -	\$ 2,344,527	\$ 58,613	\$ -	\$ 117,226	\$ 2,520,366
Rock River Siding	Track Impv.	-	-	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
*siding 136/milex2x% new		<b>6.67</b>	<b>22,458</b>	<b>1,347</b>	<b>\$ 9,198,822</b>	<b>\$ -</b>	<b>\$ 9,198,822</b>	<b>\$ 229,971</b>	<b>\$ -</b>	<b>\$ 459,941</b>	<b>\$ 9,888,735</b>

  

<b>Combined Rail Project</b>		<b>46.7</b>	<b>54,556</b>	<b>3,479</b>	<b>\$ 19,498,697.20</b>	<b>\$ 8,287,463</b>	<b>\$ 28,736,160</b>	<b>\$ 718,404</b>	<b>\$ 488,433</b>	<b>\$ 1,436,808</b>	<b>\$ 31,379,865</b>
------------------------------	--	-------------	---------------	--------------	-------------------------	---------------------	----------------------	-------------------	-------------------	---------------------	----------------------

**SCHEDULE II**  
**CONSTRUCTION SCHEDULE**

[See Attached]

Document received by the CA 1st District Court of Appeal.

Sierra Northern Railway  
2023 RRIF Express Application

	2022	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26	Jun-26	Jul-26	Aug-26	Sep-26	Oct-26			
<b>Pre-Construction Developments</b>																																							
Environmental CE Approval	9/7/2022																																						
RRIF Loan Approval & Execution		X																																					
Procurement Materials Procurement		X			X			X			X			X			X			X			X			X													
<b>Construction</b>																																							
Fogarty	#####	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Langworth							X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Wamble							X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Warnerville							X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X



Sierra Northern Railway  
2023 RRIF Express Application - Project Timeline

Internal Project #	Approximate Location (See Project Overview Map part of Attachment B-1)	Siding Length	Previous work (2022)	Year 1 (2024)	Year 2 (2025)	Year 3 (2026)	Potential Useful Life (in years)
<b>Siding Construction</b>							
1 - Fogarty**	Southwest of Knights Ferry, CA	2	Completed 12/31/2022				40
2 - Langworth	Near Riverbank, CA	1.77		X	X		40
3 - Wamble	East Oakdale, CA	1.2		X	X		40
4 - Warnerville	Warnersville	1.7			X	X	40
<b>Total Miles of Siding</b>		6.67					

\*\*To accommodate customer demand, one siding received BAB approval to be constructed before the finalization of the RRIF loan agreement. That siding, the 2-mile Fogarty siding was completed on December 31, 2022, consistent with the original budget. SNR's successful completion of this siding demonstrates SNR's ability to execute the larger Project.

Mendocino Railway  
2023 RRIF Express Application

2022	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24
<b>Pre-Construction Developments</b>													
Environmental <i>CE Approval</i>	7/20/2022												
RRIF Loan Approval & Execution		X											
Procurement <i>Materials Procurement</i>		X	X	X	X								
<b>Construction</b>													
<i>Tunnel #1</i>					X								
<b>Ties &amp; Rail</b>													
<i>Fort Bragg Block</i>					X								
<i>Noyo Canyon Block</i>					X								
<i>Willits Block</i>					X								
<b>Bridges</b>													
<i>Fort Bragg Block</i>									X				
<i>Noyo Canyon Block</i>									X				
<i>Willits Block</i>									X				
<b>MOW Walkways</b>													
<i>Fort Bragg Block</i>					X								
<i>Noyo Canyon Block</i>					X								
<i>Willits Block</i>					X								
<b>Sidings</b>													
<i>Fort Bragg Block</i>				Spring 2024									
<i>Noyo Canyon Block</i>										Fall 2024			
<i>Willits Block</i>											Winter 2024		

Mendocino Railway  
California Western Railroad  
Skunk Train  
RRIF EXPRESS

Block	Project	MP Start	MP End	Location	Description	Needs	Total Ties	Total Rail (39' sticks)	Year 1	Year 1	Year 2	Year 3	Year 4	Year 5	Total	Balance	Useful Life (in years)	
									Partial Year	(2024)	(2025)	(2026)	(2027)	(2028)				
June 2022 UPDATE - No RRIF funds are being used for the Mill Site Block, this has been removed and the ties and rail for this project have been shifted to the Noyo Canyon Block.																		
<b>FORT BRAGG</b>																		
Ties & Rail		0	3.5	Fort Bragg to Glen Blair	Mainline	Ties	3011	179		753	2258				3011	0	30	
		0	3.5	Fort Bragg to Glen Blair	Mainline	Rail			45	134					179	0	40	
Sidings		2	2.188	Between FTB and GBI (Pudding Crk MP 2)	Sidings	Ties	609	51				0			609	0	35	
		2	2.188	Between FTB and GBI (Pudding Crk MP 2)	Sidings	Rail			51						51	0	50	
MOW Walkways		0	3.5	Fort Bragg Block	MOW Walkways					X							50	
Electricity & Communications		3.5	3.5	Glen Blair Junction	Install electricity & communications					X							40	
							<b>3620</b>	<b>230</b>										
							<b>3620</b>	<b>230</b>										
<b>NOYO CANYON</b>																		
Tunnel #1		3.5	3.8	Tunnel #1	Re-establish service through Tunnel #1 and modernize.					X	X						90	
		3.5	3.8	Tunnel #1 (3.51 is PC Bridge 3.78 is NR Bridge)	Tunnel #1	Ties	975								975	0	30	
		3.5	3.8	Tunnel #1	Tunnel #1	Rail		81		81					81	0	35	
Ties & Rail		3.8	6.6	East Portal of Tunnel #1 to South Fork	Mainline	Ties	2002		501	501	501	501			2002	0	30	
		3.8	6.6	East Portal of Tunnel #1 to South Fork	Mainline	Rail		133	33	33	33	33			133	0	35	
		6.6	10	South Fork to Redwood Lodge	Mainline	Ties	2431		608	608	608	608			2431	0	30	
		6.6	10	South Fork to Redwood Lodge	Mainline	Rail		161	40	40	40	40			161	0	35	
		10	14.9	Redwood Lodge to Camp Three	Mainline	Ties	3504		876	876	876	876			3504	0	30	
		10	14.9	Redwood Lodge to Camp Three	Mainline	Rail		241	60	60	60	60			241	0	35	
		14.9	18.1	Camp Three to Alpine	Mainline	Ties	2288		572	572	572	572			2288	0	30	
		14.9	18.1	Camp Three to Alpine	Mainline	Rail		152	38	38	38	38			152	0	35	
		18.1	21.3	Alpine to Northspur	Mainline	Ties	2080		520	520	520	520			2080	0	30	
		18.1	21.3	Alpine to Northspur	Mainline	Rail		152	38	38	38	38			152	0	35	
		21.3	21.3	Northspur	Siding	Ties	650		163	163	163	163			650	0	30	
		21.3	26.8	Northspur to Shake City	Mainline	Ties	3575		894	894	894	894			3575	0	30	
		21.3	26.8	Northspur to Shake City	Mainline	Rail		261	65	65	65	65			261	0	35	
		26.8	30.4	Shake City to Clare Mill	Mainline	Ties	2495		624	624	624	624			2495	0	25	
		26.8	30.4	Shake City to Clare Mill	Mainline	Rail		171	43	43	43	43			171	0	35	
		30.4	32.6	Clare Mill to Crowley	Mainline	Ties	1573		393	393	393	393			1573	0	25	
		30.4	32.6	Clare Mill to Crowley	Mainline	Rail		104	26	26	26	26			104	0	35	
Sidings		9.75	10	Redwood Lodge	Sidings	Ties	813				813				813	0	25	
		9.75	10	Redwood Lodge	Sidings	Rail		68			68				68	0	40	
		21	21.3	Northspur	Sidings	Ties	975				975				975	0	25	
		21	21.3	Northspur	Sidings	Rail		81			81				81	0	40	
MOW Walkways		3.8	32.6	Fort Bragg Block	MOW Walkways					X	X	X					50	
Electricity & Communications		10	10	Redwood Lodge	Install electricity & communications							X					40	
		21.3	21.3	Northspur	Install electricity & communications					X							40	
							<b>23360</b>	<b>1604</b>										
							<b>23360</b>	<b>1604</b>										
<b>WILLITS</b>																		
Ties & Rail		32.6	35.4	Crowley to Tunnel #2	Mainline	Ties	1729			432	432	432	432		1729	0	20	
		32.6	34.1	Crowley to Tunnel #2	Mainline	Rail		57	14	14	14	14			57	0	25	
		35.4	40	Tunnel #2 to Willits	Mainline	Ties	2577		644	644	644	644			2577	0	20	
		35.4	40	Tunnel #2 to Willits	Mainline	Rail		174	44	44	44	44			174	0	25	
Siding		32.6	32.7	Crowley	Sidings	Ties	813			813					813	0	30	
		32.6	32.7	Crowley	Sidings	Rail		68		68					68	0	40	
Electricity & Communications		32.6	32.6	Crowley	Install electricity & communications					X							40	
MOW Walkways		21.3	37	Willits Block	MOW Walkways					X	X						50	
							<b>5119</b>	<b>299</b>										
							<b>5119</b>	<b>299</b>										
<b>OTHER ITEMS</b>																		
MOW FLAT CARS, PASSENGER COACHES, LOCOMOTIVES						Secure Locomotives				X							50	
						Secure flat cars				X							50	
						Secure First Guest Service Car				X							50	
						Secure Second Guest Service Car				X							50	
							<b>32099</b>	<b>2133</b>	Ties (per year)	0	8563	9297	8013	6226	0	<b>32099</b>		
							<b>32100</b>	<b>2150</b>	Rail (per year)	0	578	603	550	401	0	<b>2133</b>		

Ties - placed on 18" centers OR 3,250 per mile.  
Rail - 39' per stick OR 270 sticks for a mile of track.

Approx. Ties per Day  
Approx. # of Work Days to Install Ties

Mendocino Railway / Skunk Train  
Bridge List

	MP								Year 1	Year 2	Year 3	Year 4	Year 5
Bridge #	Location	Stream	Section 1 Work (1)	Section 2 Work (2)	Section 3 work (3)	Additional Comments from General Manager (4)			(2024)	(2025)	(2026)	(2027)	(2028)
<b>FORT BRAGG BLOCK</b>													
Twins at Pudding Creek #1	1	2.4	Pudding Creek	Replace all 89 ties. Add ballast and tamp up both approaches.			All Section 1 work is done. Install better walkway				X		
Twins at Pudding Creek #2	2	2.47	Pudding Creek	Replace all 60 ties. Shim or Epoxy over Pile 5 of Bent 3. Replace Stringer 3 & 7 in Span 1.			All Section 1 work is done. Install better walkway				X		
E of 1/2 mile for GBI	3	3.17	Pudding Creek	Replace Cap on Bent 1, 2, 5, and 6.			All Section 1 work is done. Install better walkway				X		
<b>NOYO CANYON BLOCK</b>													
E Portal Tunnel 1	5	3.78	Noyo River	Replace all 114 ties. Add ballast and tamp up both approaches.			Install better walkway					X	
Bare Butt	6	4.63	Noyo River	Add ballast and tamp up both approaches. Replace Cap on Bent 3. Shim or Epoxy over Pile 1 & 5 of Bent 2. Add ballast and tamp up approaches.		Replace Top Cap on Bent 1. Shim or Epoxy over Pile 4 of Bent 4. Add ballast and tamp up approach.	Install better walkway					X	
6.97	7	6.97	Noyo River	Replace Guard Timbers. Add ballast and tamp up both approaches.			Install better walkway					X	
7.88	8	7.88	Noyo River	Shim under Chord 1 of Bent 1. Add ballast and tamp up both approaches.			Install better walkway					X	
9.68	9	9.68	Noyo River	Replace East Headwall. Add ballast and tamp up both approaches.			Install better walkway					X	
Redwood Lodge #1	10	10.18	Noyo River	Replace East Headwall. Add ballast and tamp up both approaches.			Install better walkway					X	
Redwood Lodge #2	11	10.26	Noyo River	Replace all ties.	Replace Headwall. Replace all 50 ties.		Install better walkway					X	
Redwood Lodge #3	12	10.37	Noyo River	Replace all ties.			Install better walkway					X	
Little Stinker	13	11.44	Noyo River	Replace all 65 ties in Span 1.			Install better walkway					X	
11.84	14	11.84	Noyo River	Add ballast and tamp up approach.	Replace all 65 ties.		Install better walkway			X		X	
Camp Three #1	15	14.96	Noyo River				Install better walkway					X	
Camp Three #2	16	15.03	Noyo River			Replace all 45 ties. Shim under both Chords of Bent 3. Replace Cap on Bent 1 & 2. Replace Post 1 and 2 of Bent 2. Replace Sill in Bent 2 & 5. Replace all 115 ties.	Install better walkway					X	
18.57	17	18.57	Noyo River	Replace Cap on Bent 1 & 5. Replace 1/2" Chord 1 Shim on Bent 3. Replace 1 1/2" Chord 2 Shim on Bent 3.	Replace all 87 ties.		Install better walkway						X
19.28	18	19.28	Noyo River	Replace 3" Chord Shims on Bent 1. Replace all 75 ties.	Replace all 70 bridge ties. Add ballast and tamp up approach.		Install better walkway						X
E switch at NSP	19	21.31	Noyo River	Replace sill in Bent 2, 3, 4	Replace all 31 ties. Replace Sill in Row 1 of Pier 1, sill in Row 2 of Pier 1, Sill in Row 1 of Pier 2, Sill in Row 2 of Pier 2.	Replace op Cap on Nemt 1, 2, 4. Replace Post 4 & 5 of Bent 2	Install better walkway			X			
NSP YLE	20	21.48	Noyo River	Replace all 60 ties. Repair Backwall on South Side of Abutment in Bent 1.	Replace all 61 ties	Replace Cap on Bent 3	Install better walkway						X
21.74	21	21.74	Noyo River	Replace all 60 ties. Replace Sill in Bent 3. Replace Stringer 1 & 4 in Span 3. Add ballast and tamp up approach.	Replace all 54 ties.	Replace all 43 ties. Shim under Stringer 2, 3, and 6 of Bent 3. Replace sill in Bent 3. Add ballast and tamp up approach.	Install better walkway						X
22.11	22	22.11	Noyo River	Shim under both Chord on Bent 2. Replace all 30 ties.	Replace all 60 ties.		Install better walkway						X
22.32	23	22.32	Noyo River	Shim under both Chords of Bent 1 and under Stringers 1, 3, 6, and 8 of Bent 3.			Install better walkway						X
22.51	24	22.51	Noyo River	Rip/Rap at the base of Bent 1		Replace all 60 ties.	Install better walkway						X
22.68	25	22.68	Noyo River				Install better walkway						X
<b>WILLITS BLOCK</b>													
East of Summit above Blanchfield	26	35.71	Broadus Creek	Add ballast and tamp up both approaches. Post Pile 4 of Bent. Shim under Chord 1 of Bent 3 & 6. Shim under Stringers 5 & 7 of Bent 3. Shim under Chord 2 of Bent 6. Shim under Stringers 4, 5, 6 of Bent 8. Replace Cap on Bent 9. Line Bridge (Span 1).			Install better walkway						X
East of Hwy 20	27	37.8	Broadus Creek	Install Sub-cap on Bent 6. Replace Cap on Bent 2. Replace East Headwall. Replace all 75 ties. Shim under Stringers 4, 5, 6 of Bent 3. Shim under Stringers 1 & 3 of Bent 4. Add ballast and tamp up both approaches.			Install better walkway			X			
Safeway	28	39.24	Eel River				Install better walkway			X			

**SCHEDULE 2.7(a)(iv)**

**FINANCIAL COVENANT PREPAYMENT SCHEDULE**

**PREPAYMENT IN RESPECT OF CONSOLIDATED FIXED CHARGE COVERAGE RATIO**

Lines (1) through (11) are for the most recently ended four Fiscal Quarters.

Lines (1) through (8) are the calculation of Consolidated Fixed Charge Coverage Ratio, to be provided under 5.1(a)(iii)(B) and 5.1(a)(iv)(A).

(1) Consolidated EBITDA .....	_____	
(2) Consolidated Interest Expense .....	_____	
(3) Scheduled payments of principal .....	_____	
(4) Net Consolidated Capital Expenditures not made in connection with the Project.....	_____	
(5) Taxes based on income paid.....	_____	
(6) Restricted Payments (excluding Distributions).....	_____	
(7) Total fixed charges .....	_____	Sum of (2) through (6)
(8) Consolidated Fixed Charge Coverage Ratio .....	_____	(1) divided by (7)
(9) RRIF Loan interest payments.....	_____	Historical payments, included in (2)
(10) RRIF Loan principal payments .....	_____	Historical payments, included in (3)
(11) RRIF Loan debt service .....	_____	Sum of (9) and (10)
(12) Covenant Test Consolidated Fixed Charge Coverage Ratio .....	1.25	
(13) Maximum covenant-compliant total fixed charges .....	_____	(1) divided by (12)
(14) Notional RRIF Loan debt service reduction required for compliance .....	_____	Greater of (a) (7) less (13), and (b) zero
(15) Notional RRIF Loan debt service reduction as a percentage of historical debt service .....	_____ %	(14) divided by (11)
(16) RRIF Loan outstanding at end of Fiscal Quarter one year before date of calculation .....	_____	
(17) Required prepayment amount .....	_____	(15) times (16)
(18) Total Financial Covenant Test Prepayment Amounts paid, if any, in the most recently ended four Fiscal Quarters .....	_____	
(19) Mandatory prepayment amount due in respect of Consolidated Fixed Charge Coverage Ratio.....	_____	Greater of (a) (17) less (18), and (b) zero

**PREPAYMENT IN RESPECT OF CONSOLIDATED TOTAL LEVERAGE RATIO**

Lines (20) through (22) are for the most recently ended four Fiscal Quarters.

Lines (20) through (22) are the calculation of Consolidated Total Leverage Ratio, to be provided under 5.1(a)(iii)(B) and 5.1(a)(iv)(A).

- (20) Consolidated Total Indebtedness..... \_\_\_\_\_
- (21) Consolidated EBITDA..... \_\_\_\_\_
- (22) Consolidated Total Leverage Ratio..... \_\_\_\_\_ (20) divided by (21)
- (23) Covenant Test Consolidated Total Leverage Ratio..... \_\_\_\_\_ As of the Fiscal Quarter most recently ended
- (24) Maximum covenant-compliant Consolidated Total Indebtedness..... \_\_\_\_\_ (21) times (23)
- (25) Mandatory prepayment amount due in respect of Consolidated Total Leverage Ratio..... \_\_\_\_\_ Greater of (a) (20) less (24), and (b) zero

**FCCR/TLR MANDATORY PREPAYMENT AMOUNT**

- (26) FCCR/TLR Mandatory Prepayment Amount..... \_\_\_\_\_ Greater of (19) and (25)

## **SCHEDULE 4.6**

### **LITIGATION**

The Great Redwood Trail Agency (“GRTA”) has filed a notice of intent to file an adverse abandonment and initiate a proceeding at the Surface Transportation Board (“STB”) to extinguish Mendocino Railway’s (“MR”) common carrier obligation. MR is confident that the filing is without merit and will continue to defend itself in this matter. The foregoing disclosure shall not constitute an admission to any third party against any Borrower and/or its directors, officers and shareholders with respect to the foregoing.

Document received by the CA 1st District Court of Appeal.

**SCHEDULE 4.21**

**EXISTING INDEBTEDNESS AND LIENS**

JPMorgan Chase Debt, which is secured in full by cash collateral deposited by the Borrowers held in an account with JPMorgan Chase Bank, N.A.

Document received by the CA 1st District Court of Appeal.



**SCHEDULE 7.6**  
**EXISTING INVESTMENTS**

None

**EXHIBIT A**  
**FORM OF RRIF NOTE**  
**SIERRA NORTHERN RAILWAY**  
**AND**  
**MENDOCINO RAILWAY**  
**SIERRA RAILWAY COMPANIES PROJECT**  
**(RRIF No. 2024-0049)**

**RRIF NOTE**

**Maximum Principal Amount:** Up to \$31,379,805 (excluding capitalized interest)

**Effective Date:** January 11, 2024

**Due:** Earlier of (a) the latest Payment Date that is not more than thirty-five (35) years following the date on which Substantial Completion occurs or (b) December 15, 2062

**Interest Rate:** 4.21%

Mendocino Railway, a corporation created under the laws of the State of California, with an address of 100 West Laurel Street Fort Bragg, California 95437 (“**Mendocino**”) and Sierra Northern Railway, a corporation created under the laws of the State of California, with an address of 1745 Enterprise Blvd., West Sacramento, California 95691 (“**SNR**” and together with Mendocino, the “**Borrowers**” and each a “**Borrower**”), for value received, jointly and severally, hereby promise to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**RRIF Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the RRIF Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the RRIF Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the RRIF Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the RRIF Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the RRIF Loan Agreement in accordance with Exhibit F to the RRIF Loan Agreement, as revised from time to time in accordance with the RRIF Loan Agreement, until paid in full. The RRIF Lender is hereby authorized to modify the Loan Amortization Schedule included in Exhibit F to the RRIF Loan Agreement from time to time in accordance with the terms of the RRIF Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrowers thereunder. Absent manifest error, the RRIF Lender’s determination of such matters as set forth on Exhibit F to the RRIF Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrowers’ joint and several obligations hereunder or under any other RRIF Loan Document.

Payments hereon are to be made in accordance with Section 2.6(d) (*Payment of Principal and Interest*) and Section 11.12 (*Notices; Payment Instructions*) of the RRIF Loan Agreement as the same become due. Principal of and interest on this RRIF Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

This RRIF Note has been executed under and pursuant to that certain RRIF Loan Agreement, dated as of the date hereof, between the RRIF Lender and the Borrowers (the “**RRIF Loan Agreement**”) and is issued to evidence the joint and several obligation of the Borrowers under the RRIF Loan Agreement to repay the loan made by the RRIF Lender and any other payments of any kind required to be paid by the Borrowers under the RRIF Loan Agreement or the other RRIF Loan Documents referred to therein. Reference is made to the RRIF Loan Agreement for all details relating to such Borrower’s obligations hereunder. All capitalized terms used in this RRIF Note and not defined herein shall have the meanings set forth in the RRIF Loan Agreement.

This RRIF Note shall be subject to mandatory prepayment in accordance with the RRIF Loan Agreement.

This RRIF Note may be prepaid at the option of the Borrowers in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the RRIF Loan Agreement; provided, however, such prepayments shall be in principal amounts of \$100,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the RRIF Lender all or part of the principal amount of the RRIF Note in accordance with the RRIF Loan Agreement.

Any delay on the part of the RRIF Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

This RRIF Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State of California shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, each Borrower has caused this RRIF Note to be executed in its name and attested by its duly authorized officer, all as of the Effective Date set forth above.

**MENDOCINO RAILWAY**

By: \_\_\_\_\_  
Name: Robert Jason Pinoli  
Title: President

**SIERRA NORTHERN RAILWAY**

By: \_\_\_\_\_  
Name: Kennan H. Beard III  
Title: President

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto \_\_\_\_\_

*(Please Insert Social Security or other identifying number of Assignee(s)):*

\_\_\_\_\_  
\_\_\_\_\_  
the within note and all rights thereunder.

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

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatsoever.

Document received by the CA 1st District Court of Appeal.

**EXHIBIT B**

**ANTICIPATED RRIF LOAN DISBURSEMENT SCHEDULE**

<b><u>Fiscal Year</u></b>	<b><u>Amount</u></b>
2024	\$10,857,513.00
2025	\$12,571,821.00
2026	\$4,609,861.00
2027	\$2,680,488.00
2028	\$660,122.00

Document received by the CA 1st District Court of Appeal.

**EXHIBIT C**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS-  
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of [SIERRA NORTHERN RAILWAY]/[MENDOCINO RAILWAY], hereby certifies that [SIERRA NORTHERN RAILWAY]/[MENDOCINO RAILWAY] has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms, in accordance with 2 CFR § 180.335, that, to its knowledge, [SIERRA NORTHERN RAILWAY]/[MENDOCINO RAILWAY] and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3)-year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and

(d) Have not within a three (3)-year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement, dated as of January 11, 2024, between the RRIF Lender, Sierra Northern Railway and Mendocino Railway, as the same may be amended from time to time.

Dated: January 11, 2024

**[SIERRA NORTHERN RAILWAY]/  
[MENDOCINO RAILWAY]<sup>1</sup>**

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

Name:

Title:

<sup>1</sup> To be executed by Borrower's Authorized Representative.

## EXHIBIT D

### REQUISITION PROCEDURES

This Exhibit D sets out the procedures which the Borrowers agree to follow in submitting Requisitions for the disbursement of RRIF Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the RRIF Lender may reject or correct Requisitions submitted by Borrowers or withhold a disbursement. Borrowers expressly agree to the terms hereof, and further agree that (a) the rights of the RRIF Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the RRIF Lender under the RRIF Loan Agreement, and (b) nothing contained herein shall be construed to limit the rights of the RRIF Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrowers if they fails to carry out their obligations under the RRIF Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrowers for the disbursement of RRIF Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the RRIF Lender, in accordance with Section 11.12 (*Notices; Payment Instructions*) of the RRIF Loan Agreement, of a Requisition, in form and substance satisfactory to the RRIF Lender and completed and executed by Borrowers' Authorized Representative. The form of Requisition is attached as Appendix One to this Exhibit D. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the RRIF Lender at or before 5:00 p.m. (Eastern Time) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the RRIF Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the RRIF Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by the Independent Engineer relating to the construction of the Project (to the extent not previously delivered to the RRIF Lender).

The RRIF Lender shall promptly send to the Borrowers, in accordance with Section 11.12 (*Notices; Payment Instructions*) of the RRIF Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as Appendix Two to this Exhibit D. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be

resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the RRIF Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the RRIF Lender will so notify the Borrowers.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the RRIF Lender, after telephonic or e-mail notification to the Borrowers, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The RRIF Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of RRIF Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the RRIF Loan Agreement shall have occurred and be continuing; or

(b) Borrowers:

(i) knowingly take any action, or omit to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fail to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of Borrowers' industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the RRIF Lender to monitor compliance by Borrowers with applicable federal or local law pertaining to the Project or with the terms and conditions of the RRIF Loan Agreement; or

(iii) fail to observe or comply with any applicable federal or local law, or any term or condition of the RRIF Loan Agreement; or

(iv) fail to satisfy the conditions set forth in Section 2.2 (*Disbursement Conditions*) and Section 3.2 (*Conditions Precedent to All Disbursements*) of the RRIF Loan Agreement; or

(v) fail to deliver documentation satisfactory to the RRIF Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the RRIF Loan Agreement; provided, that in such case the RRIF Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.



Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the RRIF Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of RRIF Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the RRIF Loan to the Borrowers (even if such disbursement has been approved by the RRIF Lender), in each case if the RRIF Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

## APPENDIX ONE TO EXHIBIT D

### FORM OF REQUISITION

Build America Bureau  
United States Department of Transportation  
c/o Director, Office of Credit Programs  
Room W12-464  
1200 New Jersey Avenue, SE,  
Washington, D.C. 20590

Federal Railroad Administration  
Office of Regional Outreach and Project Delivery (RRD-50)  
Sacramento, CA 95814  
Attention: Juliana Barnes, PMP  
Chief, Southwest Division (RRD-56)  
Phone: 916-215-9115

Re: Sierra Railway Companies Project (RRIF No. 2024-0049)

Ladies and Gentlemen:

Pursuant to Section 2.2 (*Disbursement Conditions*) of the RRIF Loan Agreement, dated as of January 11, 2024 (the “**RRIF Loan Agreement**”), by and among SIERRA NORTHERN RAILWAY (“**SNR**”) and MENDOCINO RAILWAY (“**Mendocino**” and together with SNR, the “**Borrowers**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”), we hereby request disbursement in the amount of \$[●] in respect of Eligible Project Costs paid or incurred by or on behalf of Borrowers. Capitalized terms used but not defined herein have the meaning set forth in the RRIF Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [●].
2. The requested date of disbursement is [ ] 15, 20\_\_ (the “**Disbursement Date**”) [ , which is the first Business Day following [ ] 15, 20\_\_].
3. The amounts previously disbursed under the RRIF Loan Agreement equal, in the aggregate, \$[●]. The amounts previously disbursed and to be disbursed under the [*applicable funding document*] as of the date of the requested disbursement equal, in the aggregate, \$[●].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of Borrowers for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from RRIF Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the maximum amount of the RRIF Loan.

6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by Borrowers at the times and in the manner specified by the RRIF Loan Agreement.

7. Borrowers have all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).

8. Each of the insurance policies obtained by Borrowers in satisfaction of the condition in Section 3.1 (*Conditions Precedent to Effectiveness*) of the RRIF Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the RRIF Lender and Federal Railroad Administration and in accordance with the highest standards of Borrowers' industry.

10. The representations and warranties of Borrowers set forth in the RRIF Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of RRIF Loan proceeds), (a) no Event of Default or event of default under any other Related Document and (b) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.

12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [*insert date*] and is continuing.<sup>1</sup>

13. [A copy of the most recent certificate or report of the Independent Engineer delivered to each of the above-named addressees.]

14. The undersigned acknowledges that if Borrowers make a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on Borrowers the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal Government deems appropriate.

15. A copy of this requisition has been delivered to each of the above-named addressees.

---

<sup>1</sup> Insert the date on which Borrower submitted the Application to the RRIF Lender.

16. The undersigned are duly authorized to execute and deliver this requisition on behalf of Borrowers.

[Add wire instructions for the RRIF Lender]

Date: \_\_\_\_\_

**SIERRA NORTHERN RAILWAY<sup>1</sup>**

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

Name:

Title:

**MENDOCINO RAILWAY<sup>4</sup>**

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

Name: Robert Jason Pinoli

Title: President

---

<sup>1</sup> To be executed by Borrowers' Authorized Representative.

**APPENDIX TWO TO EXHIBIT D**  
**DISAPPROVAL OF THE RRIF LENDER**

**(To be delivered to Borrowers)**

Requisition Number [●] is [approved in the amount of \$[●]] [not approved]<sup>1</sup> by the RRIF Lender (as defined herein) pursuant to Section 2.2 (*Disbursement Conditions*) of the RRIF Loan Agreement, dated as of January 11, 2024, by and among Mendocino Railway (“**Mendocino**”) and Sierra Northern Railway (“**SNR**” and together with Mendocino, the “**Borrowers**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Any determination, action or failure to act by the RRIF Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the RRIF Lender’s sole discretion, and in no event shall the RRIF Lender be responsible for or liable to Borrowers for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF  
TRANSPORTATION**, acting by and through the  
Executive Director of the Build America Bureau

By: \_\_\_\_\_  
RRIF Lender’s Authorized Representative  
Name:  
Title:  
Dated:

---

<sup>1</sup> Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

**EXHIBIT A TO APPENDIX TWO TO EXHIBIT D**

**[Insert reasons for any partial or full denial of approval.]**

Document received by the CA 1st District Court of Appeal.

## EXHIBIT E

### COMPLIANCE WITH LAWS

Borrowers shall, and if this is a Project-based loan shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

1. The Americans with Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
2. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d *et seq.*) and USDOT implementing regulations (49 CFR Part 21);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by Borrowers of easements or other real property rights for the relocated facilities;
4. Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
5. Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
6. The Clean Air Act, as amended (42 U.S.C. §§ 7401 *et seq.*);
7. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*), including the environmental mitigation requirements and commitments made by Borrowers that result in FRA's approval of the NEPA Determination;
8. The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 *et seq.*);
9. The Endangered Species Act, as amended (16 U.S.C. §§ 1531, *et seq.*);
10. 49 U.S.C. § 303;
11. The prevailing wage requirements set forth in 40 U.S.C. §§ 3141 *et seq.*, and implementing regulations (29 CFR Part 5), and 49 U.S.C. § 24308(a);
12. The FRA Buy America(n) requirements;
13. The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);

14. The Railroad Retirement Act of 1974 (45 U.S.C. Chapter 9, Subchapter IV), and implementing regulations;
15. All Federal railroad safety laws, regulations, and orders governing railroad safety issued under any such laws or regulations;
16. The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program;
17. The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and implementing regulations (2 CFR § 200.216); and
18. The Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52).



**EXHIBIT F**  
**RRIF DEBT SERVICE**

<u>Date</u>	<u>Beginning Balance</u>	<u>Disbursement</u>	<u>Capitalized Interest</u>	<u>Interest Paid</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Balance</u>
3/15/2024	0.00	4,663,089.00	0.00	0.00	0.00	0.00	4,663,089.00
6/15/2024	4,663,089.00	2,103,268.00	49,347.21	0.00	0.00	0.00	6,815,704.21
9/15/2024	6,815,704.21	4,091,156.00	72,127.29	0.00	0.00	0.00	10,978,987.50
12/15/2024	10,978,987.50	4,091,156.00	114,922.41	0.00	0.00	0.00	15,185,065.91
3/15/2025	15,185,065.91	3,380,077.00	157,633.47	0.00	0.00	0.00	18,722,776.38
6/15/2025	18,722,776.38	3,479,281.00	198,676.87	0.00	0.00	0.00	22,400,734.25
9/15/2025	22,400,734.25	1,621,307.00	237,705.55	0.00	0.00	0.00	24,259,746.80
12/15/2025	24,259,746.80	1,501,348.00	254,634.30	0.00	0.00	0.00	26,015,729.10
3/15/2026	26,015,729.10	1,204,195.00	270,064.66	0.00	0.00	0.00	27,489,988.76
6/15/2026	27,489,988.76	1,204,196.00	291,710.21	0.00	0.00	0.00	28,985,894.97
9/15/2026	28,985,894.97	700,122.00	307,584.03	0.00	0.00	0.00	29,993,601.00
12/15/2026	29,993,601.00	700,122.00	314,817.77	0.00	0.00	0.00	31,008,540.77
3/15/2027	31,008,540.77	660,122.00	321,894.14	0.00	0.00	0.00	31,990,556.91
6/15/2027	31,990,556.91	660,122.00	339,468.02	0.00	0.00	0.00	32,990,146.93
9/15/2027	32,990,146.93	660,122.00	350,075.18	0.00	0.00	0.00	34,000,344.11
12/15/2027	34,000,344.11	660,122.00	356,873.21	0.00	0.00	0.00	35,017,339.32
3/15/2028	35,017,339.32	0.00	0.00	366,543.53	112,658.49	479,202.02	34,904,680.83
6/15/2028	34,904,680.83	0.00	0.00	369,379.27	109,822.75	479,202.02	34,794,858.08
9/15/2028	34,794,858.08	0.00	0.00	368,217.07	110,984.95	479,202.02	34,683,873.13
12/15/2028	34,683,873.13	0.00	0.00	363,052.97	116,149.05	479,202.02	34,567,724.08
3/15/2029	34,567,724.08	0.00	0.00	358,841.39	120,360.63	479,202.02	34,447,363.45
6/15/2029	34,447,363.45	0.00	0.00	365,538.44	113,663.58	479,202.02	34,333,699.87
9/15/2029	34,333,699.87	0.00	0.00	364,332.30	114,869.72	479,202.02	34,218,830.15
12/15/2029	34,218,830.15	0.00	0.00	359,166.47	120,035.55	479,202.02	34,098,794.60
3/15/2030	34,098,794.60	0.00	0.00	353,973.52	125,228.50	479,202.02	33,973,566.10
6/15/2030	33,973,566.10	0.00	0.00	360,510.73	118,691.29	479,202.02	33,854,874.81
9/15/2030	33,854,874.81	0.00	0.00	359,251.24	119,950.78	479,202.02	33,734,924.03
12/15/2030	33,734,924.03	0.00	0.00	354,087.31	125,114.71	479,202.02	33,609,809.32
3/15/2031	33,609,809.32	0.00	0.00	348,897.45	130,304.57	479,202.02	33,479,504.75
6/15/2031	33,479,504.75	0.00	0.00	355,268.00	123,934.02	479,202.02	33,355,570.73
9/15/2031	33,355,570.73	0.00	0.00	353,952.87	125,249.15	479,202.02	33,230,321.18

<u>Date</u>	<u>Beginning Balance</u>	<u>Disbursement</u>	<u>Capitalized Interest</u>	<u>Interest Paid</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Balance</u>
12/15/2031	33,230,321.58	0.00	0.00	348,790.92	130,411.10	479,202.02	33,099,910.48
3/15/2032	33,099,910.48	0.00	0.00	346,472.87	132,729.15	479,202.02	32,967,181.33
6/15/2032	32,967,181.33	0.00	0.00	348,875.65	130,326.37	479,202.02	32,836,854.96
9/15/2032	32,836,854.96	0.00	0.00	347,496.47	131,705.55	479,202.02	32,705,149.41
12/15/2032	32,705,149.41	0.00	0.00	342,340.71	136,861.31	479,202.02	32,568,288.10
3/15/2033	32,568,288.10	0.00	0.00	338,085.60	141,116.42	479,202.02	32,427,171.68
6/15/2033	32,427,171.68	0.00	0.00	344,101.16	135,100.86	479,202.02	32,292,070.82
9/15/2033	32,292,070.82	0.00	0.00	342,667.54	136,534.48	479,202.02	32,155,536.34
12/15/2033	32,155,536.34	0.00	0.00	337,509.80	141,692.22	479,202.02	32,013,844.12
3/15/2034	32,013,844.12	0.00	0.00	332,330.02	146,872.00	479,202.02	31,866,972.12
6/15/2034	31,866,972.12	0.00	0.00	338,156.60	141,045.42	479,202.02	31,725,926.70
9/15/2034	31,725,926.70	0.00	0.00	336,659.89	142,542.13	479,202.02	31,583,384.57
12/15/2034	31,583,384.57	0.00	0.00	331,504.40	147,697.62	479,202.02	31,435,686.95
3/15/2035	31,435,686.95	0.00	0.00	326,328.27	152,873.75	479,202.02	31,282,813.20
6/15/2035	31,282,813.20	0.00	0.00	331,957.79	147,244.23	479,202.02	31,135,568.97
9/15/2035	31,135,568.97	0.00	0.00	330,395.31	148,806.71	479,202.02	30,986,762.26
12/15/2035	30,986,762.26	0.00	0.00	325,242.16	153,959.86	479,202.02	30,832,802.40
3/15/2036	30,832,802.40	0.00	0.00	322,741.94	156,460.08	479,202.02	30,676,342.32
6/15/2036	30,676,342.32	0.00	0.00	324,632.82	154,569.20	479,202.02	30,521,773.12
9/15/2036	30,521,773.12	0.00	0.00	322,997.09	156,204.93	479,202.02	30,365,568.19
12/15/2036	30,365,568.19	0.00	0.00	317,851.18	161,350.84	479,202.02	30,204,217.35
3/15/2037	30,204,217.35	0.00	0.00	313,544.61	165,657.41	479,202.02	30,038,559.94
6/15/2037	30,038,559.94	0.00	0.00	318,754.39	160,447.63	479,202.02	29,878,112.31
9/15/2037	29,878,112.31	0.00	0.00	317,051.80	162,150.22	479,202.02	29,715,962.09
12/15/2037	29,715,962.09	0.00	0.00	311,903.63	167,298.39	479,202.02	29,548,663.70
3/15/2038	29,548,663.70	0.00	0.00	306,739.42	172,462.60	479,202.02	29,376,201.10
6/15/2038	29,376,201.10	0.00	0.00	311,725.76	167,476.26	479,202.02	29,208,724.84
9/15/2038	29,208,724.84	0.00	0.00	309,948.59	169,253.43	479,202.02	29,039,471.41
12/15/2038	29,039,471.41	0.00	0.00	304,803.07	174,398.95	479,202.02	28,865,072.46
3/15/2039	28,865,072.46	0.00	0.00	299,643.18	179,558.84	479,202.02	28,685,513.62
6/15/2039	28,685,513.62	0.00	0.00	304,396.53	174,805.49	479,202.02	28,510,708.13
9/15/2039	28,510,708.13	0.00	0.00	302,541.58	176,660.44	479,202.02	28,334,047.69
12/15/2039	28,334,047.69	0.00	0.00	297,398.83	181,803.19	479,202.02	28,152,244.50
3/15/2040	28,152,244.50	0.00	0.00	294,683.24	184,518.78	479,202.02	27,967,725.72
6/15/2040	27,967,725.72	0.00	0.00	295,968.84	183,233.18	479,202.02	27,784,492.50

<u>Date</u>	<u>Beginning Balance</u>	<u>Disbursement</u>	<u>Capitalized Interest</u>	<u>Interest Paid</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Balance</u>
9/15/2040	27,784,492.54	0.00	0.00	294,029.78	185,172.24	479,202.02	27,599,320.30
12/15/2040	27,599,320.30	0.00	0.00	288,895.51	190,306.51	479,202.02	27,409,013.79
3/15/2041	27,409,013.79	0.00	0.00	284,528.10	194,673.92	479,202.02	27,214,339.87
6/15/2041	27,214,339.87	0.00	0.00	288,785.16	190,416.86	479,202.02	27,023,923.01
9/15/2041	27,023,923.01	0.00	0.00	286,764.55	192,437.47	479,202.02	26,831,485.54
12/15/2041	26,831,485.54	0.00	0.00	281,627.69	197,574.33	479,202.02	26,633,911.21
3/15/2042	26,633,911.21	0.00	0.00	276,481.89	202,720.13	479,202.02	26,431,191.08
6/15/2042	26,431,191.08	0.00	0.00	280,474.77	198,727.25	479,202.02	26,232,463.83
9/15/2042	26,232,463.83	0.00	0.00	278,365.97	200,836.05	479,202.02	26,031,627.78
12/15/2042	26,031,627.78	0.00	0.00	273,232.25	205,969.77	479,202.02	25,825,658.01
3/15/2043	25,825,658.01	0.00	0.00	268,091.56	211,110.46	479,202.02	25,614,547.55
6/15/2043	25,614,547.55	0.00	0.00	271,808.95	207,393.07	479,202.02	25,407,154.48
9/15/2043	25,407,154.48	0.00	0.00	269,608.20	209,593.82	479,202.02	25,197,560.66
12/15/2043	25,197,560.66	0.00	0.00	264,477.74	214,724.28	479,202.02	24,982,836.38
3/15/2044	24,982,836.38	0.00	0.00	261,507.50	217,694.52	479,202.02	24,765,141.86
6/15/2044	24,765,141.86	0.00	0.00	262,077.46	217,124.56	479,202.02	24,548,017.30
9/15/2044	24,548,017.30	0.00	0.00	259,779.73	219,422.29	479,202.02	24,328,595.01
12/15/2044	24,328,595.01	0.00	0.00	254,659.24	224,542.78	479,202.02	24,104,052.23
3/15/2045	24,104,052.23	0.00	0.00	250,219.88	228,982.14	479,202.02	23,875,070.09
6/15/2045	23,875,070.09	0.00	0.00	253,350.47	225,851.55	479,202.02	23,649,218.54
9/15/2045	23,649,218.54	0.00	0.00	250,953.85	228,248.17	479,202.02	23,420,970.37
12/15/2045	23,420,970.37	0.00	0.00	245,830.36	233,371.66	479,202.02	23,187,598.71
3/15/2046	23,187,598.71	0.00	0.00	240,706.34	238,495.68	479,202.02	22,949,103.03
6/15/2046	22,949,103.03	0.00	0.00	243,524.57	235,677.45	479,202.02	22,713,425.58
9/15/2046	22,713,425.58	0.00	0.00	241,023.68	238,178.34	479,202.02	22,475,247.24
12/15/2046	22,475,247.24	0.00	0.00	235,903.89	243,298.13	479,202.02	22,231,949.11
3/15/2047	22,231,949.11	0.00	0.00	230,785.91	248,416.11	479,202.02	21,983,533.00
6/15/2047	21,983,533.00	0.00	0.00	233,278.42	245,923.60	479,202.02	21,737,609.40
9/15/2047	21,737,609.40	0.00	0.00	230,668.80	248,533.22	479,202.02	21,489,076.18
12/15/2047	21,489,076.18	0.00	0.00	225,552.88	253,649.14	479,202.02	21,235,427.04
3/15/2048	21,235,427.04	0.00	0.00	222,281.55	256,920.47	479,202.02	20,978,506.57
6/15/2048	20,978,506.57	0.00	0.00	222,005.34	257,196.68	479,202.02	20,721,309.89
9/15/2048	20,721,309.89	0.00	0.00	219,283.55	259,918.47	479,202.02	20,461,391.42
12/15/2048	20,461,391.42	0.00	0.00	214,179.34	265,022.68	479,202.02	20,196,368.74
3/15/2049	20,196,368.74	0.00	0.00	209,654.91	269,547.11	479,202.02	19,926,821.18

<u>Date</u>	<u>Beginning Balance</u>	<u>Disbursement</u>	<u>Capitalized Interest</u>	<u>Interest Paid</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Balance</u>
6/15/2049	19,926,821.63	0.00	0.00	211,453.61	267,748.41	479,202.02	19,659,073.22
9/15/2049	19,659,073.22	0.00	0.00	208,612.40	270,589.62	479,202.02	19,388,483.60
12/15/2049	19,388,483.60	0.00	0.00	203,504.72	275,697.30	479,202.02	19,112,786.30
3/15/2050	19,112,786.30	0.00	0.00	198,406.44	280,795.58	479,202.02	18,831,990.72
6/15/2050	18,831,990.72	0.00	0.00	199,835.80	279,366.22	479,202.02	18,552,624.50
9/15/2050	18,552,624.50	0.00	0.00	196,871.31	282,330.71	479,202.02	18,270,293.79
12/15/2050	18,270,293.79	0.00	0.00	191,768.01	287,434.01	479,202.02	17,982,859.78
3/15/2051	17,982,859.78	0.00	0.00	186,676.87	292,525.15	479,202.02	17,690,334.63
6/15/2051	17,690,334.63	0.00	0.00	187,721.11	291,480.91	479,202.02	17,398,853.72
9/15/2051	17,398,853.72	0.00	0.00	184,628.06	294,573.96	479,202.02	17,104,279.76
12/15/2051	17,104,279.76	0.00	0.00	179,529.34	299,672.68	479,202.02	16,804,607.08
3/15/2052	16,804,607.08	0.00	0.00	175,902.00	303,300.02	479,202.02	16,501,307.06
6/15/2052	16,501,307.06	0.00	0.00	174,625.31	304,576.71	479,202.02	16,196,730.35
9/15/2052	16,196,730.35	0.00	0.00	171,402.13	307,799.89	479,202.02	15,888,930.46
12/15/2052	15,888,930.46	0.00	0.00	166,317.17	312,884.85	479,202.02	15,576,045.61
3/15/2053	15,576,045.61	0.00	0.00	161,692.16	317,509.86	479,202.02	15,258,535.75
6/15/2053	15,258,535.75	0.00	0.00	161,916.06	317,285.96	479,202.02	14,941,249.79
9/15/2053	14,941,249.79	0.00	0.00	158,549.18	320,652.84	479,202.02	14,620,596.95
12/15/2053	14,620,596.95	0.00	0.00	153,460.19	325,741.83	479,202.02	14,294,855.12
3/15/2054	14,294,855.12	0.00	0.00	148,392.35	330,809.67	479,202.02	13,964,045.45
6/15/2054	13,964,045.45	0.00	0.00	148,179.57	331,022.45	479,202.02	13,633,023.00
9/15/2054	13,633,023.00	0.00	0.00	144,666.92	334,535.10	479,202.02	13,298,487.90
12/15/2054	13,298,487.90	0.00	0.00	139,583.12	339,618.90	479,202.02	12,958,869.00
3/15/2055	12,958,869.00	0.00	0.00	134,523.72	344,678.30	479,202.02	12,614,190.70
6/15/2055	12,614,190.70	0.00	0.00	133,855.58	345,346.44	479,202.02	12,268,844.26
9/15/2055	12,268,844.26	0.00	0.00	130,190.93	349,011.09	479,202.02	11,919,833.17
12/15/2055	11,919,833.17	0.00	0.00	125,112.53	354,089.49	479,202.02	11,565,743.68
3/15/2056	11,565,743.68	0.00	0.00	121,064.27	358,137.75	479,202.02	11,207,605.93
6/15/2056	11,207,605.93	0.00	0.00	118,604.65	360,597.37	479,202.02	10,847,008.56
9/15/2056	10,847,008.56	0.00	0.00	114,788.62	364,413.40	479,202.02	10,482,595.16
12/15/2056	10,482,595.16	0.00	0.00	109,726.43	369,475.59	479,202.02	10,113,119.57
3/15/2057	10,113,119.57	0.00	0.00	104,982.50	374,219.52	479,202.02	9,738,900.05
6/15/2057	9,738,900.05	0.00	0.00	103,344.41	375,857.61	479,202.02	9,363,042.44
9/15/2057	9,363,042.44	0.00	0.00	99,355.99	379,846.03	479,202.02	8,983,196.41
12/15/2057	8,983,196.41	0.00	0.00	94,289.11	384,912.91	479,202.02	8,598,283.50

<u>Date</u>	<u>Beginning Balance</u>	<u>Disbursement</u>	<u>Capitalized Interest</u>	<u>Interest Paid</u>	<u>Principal Repayment</u>	<u>Debt Service</u>	<u>Ending Balance</u>
3/15/2058	8,598,283.50	0.00	0.00	89,257.25	389,944.77	479,202.02	8,208,338.73
6/15/2058	8,208,338.73	0.00	0.00	87,102.85	392,099.17	479,202.02	7,816,239.56
9/15/2058	7,816,239.56	0.00	0.00	82,942.08	396,259.94	479,202.02	7,419,979.62
12/15/2058	7,419,979.62	0.00	0.00	77,881.33	401,320.69	479,202.02	7,018,658.93
3/15/2059	7,018,658.93	0.00	0.00	72,859.45	406,342.57	479,202.02	6,612,316.36
6/15/2059	6,612,316.36	0.00	0.00	70,166.65	409,035.37	479,202.02	6,203,280.99
9/15/2059	6,203,280.99	0.00	0.00	65,826.16	413,375.86	479,202.02	5,789,905.13
12/15/2059	5,789,905.13	0.00	0.00	60,771.80	418,430.22	479,202.02	5,371,474.91
3/15/2060	5,371,474.91	0.00	0.00	56,225.85	422,976.17	479,202.02	4,948,498.74
6/15/2060	4,948,498.74	0.00	0.00	52,367.56	426,834.46	479,202.02	4,521,664.28
9/15/2060	4,521,664.28	0.00	0.00	47,850.58	431,351.44	479,202.02	4,090,312.84
12/15/2060	4,090,312.84	0.00	0.00	42,815.30	436,386.72	479,202.02	3,653,926.12
3/15/2061	3,653,926.12	0.00	0.00	37,930.76	441,271.26	479,202.02	3,212,654.86
6/15/2061	3,212,654.86	0.00	0.00	34,091.11	445,110.91	479,202.02	2,767,543.95
9/15/2061	2,767,543.95	0.00	0.00	29,367.82	449,834.20	479,202.02	2,317,709.75
12/15/2061	2,317,709.75	0.00	0.00	24,327.07	454,874.95	479,202.02	1,862,834.80
3/15/2062	1,862,834.80	0.00	0.00	19,337.76	459,864.26	479,202.02	1,402,970.54
6/15/2062	1,402,970.54	0.00	0.00	14,887.64	464,314.38	479,202.02	938,656.16
9/15/2062	938,656.16	0.00	0.00	9,960.56	469,241.46	479,202.02	469,414.70
12/15/2062	469,414.70	0.00	0.00	4,927.06	469,414.70	474,341.76	0.00
<b>Total</b>		<b>31,379,805.00</b>	<b>3,637,534.32</b>	<b>32,066,083.22</b>	<b>35,017,339.32</b>	<b>67,083,422.54</b>	

## EXHIBIT G

### OPINIONS REQUIRED OF COUNSEL TO THE BORROWERS

An opinion of the counsel of Borrowers, dated as of the Effective Date, to the effect that: (a) each Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization; (b) each Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by each Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) each Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any Governmental Authority is required on the part of any Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by such Borrower; (f) the execution and delivery by each Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of such Borrower, (ii) violate the law of the United States of America or of the state of its organization or the location of the Project or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which any Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which such Borrower is subject; (g) no Borrower is an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against any Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.<sup>1</sup>

---

<sup>1</sup> Other opinions to be added as appropriate for the specific project or transaction.

## EXHIBIT H

### FORM OF BORROWERS' OFFICER'S CERTIFICATE

#### *MENDOCINO RAILWAY OFFICER'S CERTIFICATE*

Reference is made to that certain RRIF Loan Agreement, dated as of January 11, 2024 (the “**RRIF Loan Agreement**”), by and among Sierra Northern Railway and Mendocino Railway (“**Mendocino**”, and together with Sierra Northern Railway, the “**Borrowers**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, Robert Jason Pinoli, Chief Executive Officer, as Borrower's Authorized Representative of Mendocino, does hereby certify on behalf of Mendocino and not in his/her personal capacity, as of the date hereof:

- (a) attached hereto as Exhibit A are complete and fully executed copies of each RRIF Loan Document and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the RRIF Lender in its sole discretion;
- (b) attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by Mendocino to execute the Related Documents to which Mendocino is or will be a party, and who have been appointed a Borrower's Authorized Representative of Mendocino in accordance with Section 11.3 (*Borrowers' Authorized Representative*) of the RRIF Loan Agreement;
- (c) attached hereto as Exhibit C is a true, correct and complete copy of the Construction Agreement and Terms and Conditions dated as of October 24, 2023, by and between Mendocino, Granite Construction Company and AECOM, and it is in full force and effect and has not been amended, amended and restated, modified or supplemented except as listed below and attached hereto as part of Exhibit C:
- (d) Mendocino has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (e) attached hereto as Exhibit D is the Base Case Financial Model, which Base Case Financial Model: demonstrates (i) that the Consolidated Fixed Charge Coverage Ratio as of the last day of any Fiscal Year, beginning with the Fiscal Year ending December 31, 2022, will be at least 1.25:1.00; (ii) that the Consolidated Total Leverage Ratio as of the last day of any Fiscal Year, beginning with the Fiscal Year ending December 31, 2022, will not be in excess of the Consolidated Total Leverage Ratio required pursuant to the terms hereof for such Fiscal Year; and (iii) that the total balances of unrestricted cash of the Borrowers will, as of the last day of any

Fiscal Year beginning with the Fiscal Year ending December 31, 2022, be equal to or greater than the Minimum Cash Balance Amount;

- (f) attached hereto as Exhibit E is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;
- (g) (i) Mendocino's Federal Employer Identification Number is 73-1700581 and attached hereto as Exhibit F-1 is evidence thereof, (ii) Mendocino's Unique Entity Identifier number is U835LQN4LRX8, and (iii) Mendocino has registered with, and obtained confirmation of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit F-2 is evidence of each of (ii) and (iii);
- (h) attached hereto as Exhibit G are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of the Loan Documents;
- (i) attached hereto as (i) Exhibit H-1 is a copy of Mendocino's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of California, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (ii) Exhibit H-2 is a copy of all resolutions authorizing Borrower's to execute and deliver, and to perform its obligations under, the RRIF Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by Mendocino relating to the matters described therein, and (iii) as Exhibit H-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable for Mendocino to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the RRIF Loan Documents;
- (j) attached hereto as Exhibit I is a true, correct and complete copy of the most recent Borrowers' Financial Statements, which document has not been revoked or amended on or prior to the date hereof;
- (k) attached hereto as Exhibit J is a plan for incorporation of the procedures described in Section 6.19 (*Small and Disadvantaged Businesses*) into the Borrowers' implementation of the Project;
- (l) the representations and warranties of Mendocino set forth in the RRIF Loan Agreement and in each other Related Document to which Mendocino is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (m) no material adverse effect, or any event or condition that could reasonably be expected to result in a material adverse effect, has occurred and is continuing since the date the Borrowers submitted the RRIF Application to the RRIF Lender.



IN WITNESS WHEREOF, the undersigned has executed this certificate as  
January 11, 2024.

**MENDOCINO RAILWAY**

By: \_\_\_\_\_  
Name: Robert Jason Pinoli  
Title: Chief Executive Officer Authorized Person

Document received by the CA 1st District Court of Appeal.

**EXHIBIT B TO EXHIBIT H**

**INCUMBENCY CERTIFICATE OF MENDOCINO RAILWAY**

The undersigned certifies that he is the Secretary of MENDOCINO RAILWAY, a corporation created under the laws of California, (the “Mendocino”), and as such he is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents as Borrowers’ Authorized Representative of Mendocino (as defined in that certain RRIF Loan Agreement, dated as of the date hereof, among Mendocino, Sierra Northern Railway (together, the “Borrowers”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Robert Jason Pinoli	Chief Executive Officer	_____
David Magaw	Chief Financial Officer	_____
Christopher Hart	Vice President	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this January 11, 2024.

**MENDOCINO RAILWAY**

By: \_\_\_\_\_  
Name: Torgny Nilsson  
Title: Secretary

Document received by the CA 1st District Court of Appeal.

## ***SIERRA NORTHERN RAILWAY OFFICER'S CERTIFICATE***

Reference is made to that certain RRIF Loan Agreement, dated as of January 11, 2024 (the “**RRIF Loan Agreement**”), by and among Sierra Northern Railway (“**SNR**”) and Mendocino Railway (together with SNR, the “**Borrowers**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the RRIF Loan Agreement.

The undersigned, Kennan H. Beard III, Chief Executive Officer, as Borrower’s Authorized Representative of SNR, does hereby certify on behalf of SNR and not in his/her personal capacity, as of the date hereof:

- (a) attached hereto as Exhibit A are complete and fully executed copies of each RRIF Loan Document and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the RRIF Lender in its sole discretion;
- (b) attached hereto as Exhibit B is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by SNR to execute the Related Documents to which SNR is or will be a party, and who have been appointed a Borrower’s Authorized Representative of SNR in accordance with Section 11.3 (*Borrowers’ Authorized Representative*) of the RRIF Loan Agreement;
- (c) SNR has obtained all Governmental Approvals necessary to commence construction of the Project and each such Governmental Approval is final and non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);
- (d) attached hereto as Exhibit C is the Base Case Financial Model, which Base Case Financial Model: demonstrates (i) that the Consolidated Fixed Charge Coverage Ratio as of the last day of any Fiscal Year, beginning with the Fiscal Year ending December 31, 2022, will be at least 1.25:1.00; (ii) that the Consolidated Total Leverage Ratio as of the last day of any Fiscal Year, beginning with the Fiscal Year ending December 31, 2022, will not be in excess of the Consolidated Total Leverage Ratio required pursuant to the terms hereof for such Fiscal Year; and (iii) that the total balances of unrestricted cash of the Borrowers will, as of the last day of any Fiscal Year beginning with the Fiscal Year ending December 31, 2022, be equal to or greater than the Minimum Cash Balance Amount;
- (e) attached hereto as Exhibit D is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof;
- (f) (i) SNR’s Federal Employer Identification Number is 68-0197927 and attached hereto as Exhibit E-1 is evidence thereof, (ii) SNR’s Unique Entity Identifier number is V3KCGMJPBG36, and (iii) SNR has registered with, and obtained confirmation of active registration status with no active exclusions listed in such registration from, the

Document received by the CA 1st District Court of Appeal.

federal System for Award Management (www.SAM.gov), and attached hereto as Exhibit E-2 is evidence of each of (ii) and (iii);

- (g) attached hereto as Exhibit F are true, correct and complete copies of certificates of insurance that demonstrate satisfaction of the insurance requirements of the Loan Documents;
- (h) attached hereto as (i) Exhibit G-1 is a copy of SNR's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of California, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate, (ii) Exhibit G-2 is a copy of all resolutions authorizing SNR to execute and deliver, and to perform its obligations under, the RRIF Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by SNR relating to the matters described therein, and (iii) as Exhibit G-3 is a copy of such further instruments and documents as are necessary, appropriate or advisable for SNR to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the RRIF Loan Documents;
- (i) attached hereto as Exhibit H is a true, correct and complete copy of the most recent Borrowers' Financial Statements, which document has not been revoked or amended on or prior to the date hereof;
- (j) attached hereto as Exhibit I is a plan for incorporation of the procedures described in Section 6.19 (*Small and Disadvantaged Businesses*) into the Borrowers' implementation of the Project;
- (k) the representations and warranties of SNR set forth in the RRIF Loan Agreement and in each other Related Document to which SNR is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (l) no material adverse effect, or any event or condition that could reasonably be expected to result in a material adverse effect, has occurred and is continuing since the date the Borrowers submitted the RRIF Application to the RRIF Lender.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**SIERRA NORTHERN RAILWAY**

By: \_\_\_\_\_  
Name: Kennan H. Beard III  
Title: Chief Executive Officer

Document received by the CA 1st District Court of Appeal.

**EXHIBIT B TO EXHIBIT H**

**INCUMBENCY CERTIFICATE OF SIERRA NORTHERN RAILWAY**

The undersigned certifies that he is the Secretary of SIERRA NORTHERN RAILWAY, a corporation created under the laws of California, (“SNR”), and as such he is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the RRIF Loan Documents as Borrowers’ Authorized Representative of SNR (as defined in that certain RRIF Loan Agreement, dated as of the date hereof, among SNR, Mendocino Railway (together with SNR, the “Borrowers”), and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Kennan H. Beard III	President/CEO	_____
David Magaw	Chief Financial Officer	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this January 11, 2024.

**SIERRA NORTHERN RAILWAY**

By: \_\_\_\_\_  
Name: Torgny Nilsson  
Title: Secretary

Document received by the CA 1st District Court of Appeal.

**EXHIBIT I**

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

*[Letterhead of Borrowers]*

[Date]

Build America Bureau  
United States Department of Transportation  
Room W12-464  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590  
Attention: Director, Office of Credit Programs

**Project:** Sierra Railway Companies Project (RRIF No. 2024-0049)

Dear Director:

This Notice is provided pursuant to Section 5.2(a) (*Notice of Certain Events; Other Information*) of that certain RRIF Loan Agreement (the “**RRIF Loan Agreement**”), dated as of January 11, 2024, by and among Mendocino Railway (“**Mendocino**”) and Sierra Northern Railway (“**SNR**” and together with Mendocino, the “**Borrowers**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**RRIF Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the RRIF Loan Agreement.

I, the undersigned, in my capacity as Borrowers’ Authorized Representative and not in my individual capacity, do hereby certify to the RRIF Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the RRIF Loan Agreement, has been achieved.

\_\_\_\_\_  
[Borrowers’ Authorized Representative]

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

**EXHIBIT J**

**CERTIFICATION REGARDING THE PROHIBITION ON  
THE USE OF APPROPRIATED FUNDS FOR LOBBYING**

The undersigned, on behalf of [MENDOCINO RAILWAY]/[SIERRA NORTHERN RAILWAY], hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Borrowers, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the RRIF Loan.

(b) If any funds other than proceeds of the RRIF Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the RRIF Loan, Borrowers shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) Borrowers shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the RRIF Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: January 11, 2024

**[MENDOCINO RAILWAY]/[SIERRA  
NORTHERN RAILWAY]<sup>1</sup>**

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

Name:

Title:

<sup>1</sup> To be executed by Borrower's Authorized Representative.



**EXHIBIT K**

**U.S. SECRETARY OF LABOR PRESCRIBED EMPLOYMENT ARRANGEMENTS**

[See Attached]

Document received by the CA 1st District Court of Appeal.

## APPENDIX

The scope and purpose of this Appendix are to provide, pursuant to Section 516 of the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210), for fair and equitable arrangements to protect the interests of employees of railroads affected by actions taken pursuant to authorizations or approval under Title V of that Act (hereinafter referred to as "Title V"); therefore, fluctuations and changes in volume or character of employment brought about solely by other causes are not within the purview of this Appendix.

### ARTICLE I

1. DEFINITIONS - Whenever used in this Appendix, unless its context requires otherwise:

(a) "Railroad" means a common carrier by railroad or express as defined in Section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes the Consolidated Rail Corporation, the National Railroad Passenger Corporation and the Alaska Railroad.

(b) "Project" means any action taken pursuant to authorizations or approval obtained under Title V.

(c) "Protected employee" means an employee of a railroad who had an employment relationship with such railroad on the date on which such railroad first applied for financial assistance applicable to the project involved and who is affected by actions taken pursuant to the authorization or approval under Title V: provided, however, that for so long as an employee is protected under Title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C.

771 et seq.), he shall not be a protected employee under this Appendix; and provided, further, that an employee who was benefitted solely as a result of a project shall not be a protected employee under this Appendix.

(d) "Displaced employee" means a protected employee of a railroad who, as a result of a project is placed in a worse position with respect to his compensation and rules governing his working conditions.

(e) "Dismissed employee" means a protected employee of a railroad who, as a result of a project, is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a project and he is unable to secure another position by the exercise of his seniority rights.

(f) "Protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and ends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom: provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this Appendix, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May, 1935.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of a railroad's employees under applicable

... and/or existing collective bargaining agreements or otherwise shall be preserved and be applicable unless changed by future collective bargaining agreements or applicable statutes. As applied to the regulation of subcontracting by the railroads of work which is financed by funds provided pursuant to Title V, the provisions of this Section shall mean that a determination of whether or not such work validly may be subcontracted by a railroad shall not be affected by the fact that the work is being financed by funds provided pursuant to Title V.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements: provided, however, that if a protected employee otherwise is eligible for protection under both this Appendix and some other security or other protective conditions or arrangements, he shall elect between protection under this Appendix and protection under such other arrangement and, for so long as he continues to be protected under the arrangement which he so elects, he shall not be entitled to any protection or benefit (regardless of whether or not such benefit is duplicative) under the arrangement which he does not so elect; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of his protective period under that arrangement.

4.(a) When a railroad contemplates a change or changes in its operations, services, facilities or equipment as a result of a project which may be the dismissal or displacement of protected employees or rearrangement

of forces involving such employees, it shall give at least sixty (60) days written notice of such intended change or changes by posting a notice on bulletin boards convenient to the interested protected employees of the railroad and by sending registered mail notice to the duly authorized representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes to be effected, including an estimate of the number of protected employees of each class affected by the intended changes.

(b) At the request of either the railroad or the representative of such interested employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this Appendix shall commence within ten (10) days from the receipt of such request. Each change which may result in a dismissal or displacement of protected employees or rearrangement of forces involving such employees, shall provide for the reduction of forces from all employees involved on bases accepted as appropriate for application in the particular case and any assignment of employees made necessary by the change shall be made on the basis of an agreement or decision under this Section 4. In the event of failure to agree within thirty (30) days from the approval of the railroad's application for financial assistance either party to the dispute may submit it for resolution in accordance with the following procedures:

(1) Within five (5) days after either party has notified the other in writing of his desire to submit the dispute for resolution hereunder, the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee, the National Mediation Board shall immediately appoint a referee. No

ater than twenty (20) days after a referee has been designated a hearing the dispute shall commence.

(ii) The decision of the referee shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(c) If a notice of intended changes is served pursuant to this section 4, the implementation of work funded from financial assistance under the project shall not be commenced until after an agreement is reached or the decision of a referee has been rendered.

5. DISPLACEMENT ALLOWANCES - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by twelve (12) the total compensation received by the employee and the total time for which he was paid during the last twelve (12) months in which he performed compensated service immediately preceding the date of his displacement as a result of the project (thereby producing average monthly

compensation and average monthly time paid for in the test period). Such allowance shall be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement or dismissal for justifiable cause.

6. DISMISSAL ALLOWANCES - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last twelve (12) months of his employment

in which he earned compensation prior to the date he is first deprived of employment as a result of the project. Such allowance shall be adjusted to reflect subsequent general wage increases. A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty (60) days after the claim is filed by the employee unless the claim is disputed by the railroad.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of Section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with the working agreement, or failure without good cause to accept a comparable position which does not require a change of residence, for which he is qualified and eligible with the railroad from which he was dismissed after being notified, if his return does not infringe upon employment rights of other employees under a working agreement.



7. SEPARATION ALLOWANCE - A dismissed employee entitled to protection under this Appendix, may, at his option within seven (7) days of his dismissal or an arbitration award establishing that he is a dismissed employee, resign and (in lieu of all other benefits and protections provided in this Appendix) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May, 1936.

8. FRINGE BENEFITS - No protected employee who is affected by a project shall be deprived during his protective period of any rights, privileges or benefits attached to his previous employment, such as free transportation, hospitalization, pensions, insurance, vacation benefits, et cetera under the same conditions and so long as such rights, privileges or benefits continue to be accorded to other employees of the railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges or benefits can be so maintained under present authority of law, corporate action or through future authorization which may be obtained.

9. MOVING EXPENSES - Any protected employee retained in the service of a railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the project and who within his protective period is required to move his place of residence shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, during the time necessary for making the move, and for a reasonable time thereafter, not to exceed three working days, used in securing a place of residence in his new location. The exact extent of the responsibility of the railroad under this

Section 9 and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives: provided, however, that changes in residence which are not a result of a project, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this Section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, etc. for an employee furloughed within three (3) years after changing his point of employment as a result of a project, who elects to move his place of residence back to his original point of employment. A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted unless disputed by the railroad but no claim shall be paid if presented to the railroad more than ninety (90) days after the date on which the expenses were incurred.

10. Should a railroad rearrange or adjust its forces in anticipation of a project with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this Appendix, this Appendix will apply to such employee.

11. ARBITRATION OF DISPUTES - (a) In the event a railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this Appendix, except Sections 4 and 12 of this Article I, within thirty (30) days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within ten (10) days, select one member

of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroad, as the case may be, shall be deemed the selected member, and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within ten (10) days the neutral member whose designation will be binding upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives, provided however, that the decision in such case shall be made by the neutral member.

(c) The decision, by majority vote except as provided otherwise in paragraph (b) of this Section, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a project, it shall be his obligation to identify

Document received by the CA 1st District Court of Appeal.

the project which allegedly affected him and to specify the pertinent facts of that project relied upon, including the change or changes resulting from project which allegedly affected him. It shall then be the railroad's burden to prove that factors other than a change resulting from the project affected the employee. The claiming employee shall prevail on this issue if it is established that the project had an effect upon the employee even if other factors also may have affected the employee.

12. LOSSES FROM HOME REMOVAL - (a) The following conditions shall apply to the extent they are applicable in each instance to any protected employee who is retained in the service of a railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the project and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value, such loss to be paid within sixty (60) days after the employee has filed a claim for such loss unless a controversy arises as to which paragraph (d) of this Section applies. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to implementation of work funded from financial assistance under the project so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) The employee may elect to waive the provisions of paragraph

(a)(i) of this Section and to receive, in lieu thereof, an amount equal to the closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed \$3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(iii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iv) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a project, which are made subsequent to the initial changes caused by the project and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this Section.

(c) No claim for loss shall be paid under the provisions of this Section unless such claim is presented to the railroad within one (1) year after the date the employee moves.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employees, or their representatives, and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected

In the following manner: One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within thirty (30) days upon a valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within ten (10) days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

## ARTICLE II

1. Any protected employee whose employment is terminated or who is furloughed as a result of a project shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when so affected, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If an employee who has made a request under Sections 1 or 2 of this Article II fails without good cause within ten (10) calendar days to accept

an offer of a position comparable to that which he held when his employment terminated or he was furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this Appendix.

### ARTICLE III

Protected employees of a railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between a railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within thirty (30) days after the dispute arises, either party may refer the dispute to the Secretary of Labor for determination. The determination of the Secretary of Labor, or his designated representative, shall be final and binding on the parties.

### ARTICLE IV

1. It is the intent of this Appendix to provide fair and equitable employee protections which meet the requirements of Section 516 of Title V of Public Law 94-210 and which, insofar as is compatible with Title V, shall contain the basic monetary protections and arbitration provisions of the employee protection arrangements prescribed by the Secretary of Labor and interpreted by the Secretary of Labor, pursuant to the Rail Passenger Service Act of 1970 (45 U.S.C. 521 et seq.).

2. In the event any provision of this Appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Appendix shall not be affected, and such provision shall be renegotiated and resubmitted to the Secretary of Labor for certification pursuant to Section 516 of Title V.



## EXHIBIT L

### REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

#### 2 CFR Part 170

#### I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

##### a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

##### 2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

##### b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if -

i. The total Federal funding authorized to date under this RRIF Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received -

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this RRIF Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if -

- i. In the subrecipient's preceding fiscal year, the subrecipient received -

(A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- 1. Subawards, and
- 2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this **Exhibit L**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrowers award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this RRIF Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

## EXHIBIT M

### DEFINITION OF PROJECT

#### “REQUIRED PROJECT COMPONENT”

##### SNR COMPONENT.

A portion of the RRIF Loan to be utilized by SNR to construct 6.67 miles of railroad track siding (the “*Specified SNR Track Siding*”) in four locations along the existing rail right-of-way (as the context may require, a “*ROW*”) on its Oakdale Division which extends from Riverbank, CA in California’s Central Valley, to Standard, CA in California’s Sierra Nevada foothills (the “*Oakdale Branch*”). The Specified SNR Track Siding will be built within SNR’s existing 50 to 100 foot mainline ROW that has been in continuous railroad use since 1897 (collectively, the “*SNR Line*”). The Specified SNR Track Siding includes:

- The “Langworth Siding” comprised of a 1.77-mile siding east of Riverbank, CA;
- The “Wamble Siding” comprised of a 1.2-mile segment east of Oakdale, CA;
- The “Fogarty Siding” located on a 2-mile segment between Wamble Road and Fogarty Road; and
- The “Warnerville Siding” comprised of a 1.7-mile track near a small farm area known as “Warnerville”.

The Specified SNR Track Siding will have an anticipated useful life of 40 years. The Borrower has completed preliminary design and is ready to build the Specified SNR Track Siding. SNR’s portion of the Project will allow it to increase its track capacity by adding sidings in the existing SNR Line to accommodate the demand of local businesses and new clients that want to locate along the Oakdale Branch.

##### MENDOCINO COMPONENT.

A portion of the RRIF Loan to be utilized to fund the following projects (the “*MR Projects*”) along Mendocino’s approximate 40 mile ROW, which extends from Milepost 0 located in the City of Fort Bragg, CA to Milepost 40 located in Willits, CA, Mendocino County, CA and the Cities of Fort Bragg, CA and Willits, CA (collectively, the “*MR Line*”). The MR Projects on the MR Line include the following components:

- To make track improvements by replacing approximately 32,100 ties across the MR Line;
- To replace approximately 2,150 sticks of rail across three blocks;
- To undertake related track work and ROW improvements, including the following: refurbishment of four sidings within the existing MR Line (inclusive of improvement/reinstallation of switches); refurbishment of actively maintained walkways and footpaths for maintenance-of-way (as the context may require, an “*MOW*”) crews along the ROW from Fort Bragg to Willits; the addition of electrical power utilities to the ROW

from Fort Bragg to Willits; and the installation of new security fencing and cameras along the ROW from Fort Bragg to Willits;

- To make currently identified structural improvements to stabilize Tunnel #1 located **at approximately milepost 3.5 of the MR Line**<sup>1</sup>;
- To make small improvements to 27 bridge sites along the MR Line.

Collectively, the improvements listed above to the MR Line will have an anticipated useful life of generally 30-50 years.

### **“OPTIONAL PROJECT COMPONENT”**

As part of the MR Project, MR may, and currently plans to, acquire rolling stock, specifically ten (10) former PGEX coal cars built in 1992 by the Johnstown America Corporation. Because these cars are 50 feet or less in length they are well suited for the MR Line. The aluminum car bodies will be removed and recycled and using American steel Mendocino will convert from the steel frame up flat cars for MOW services, flat cars for freight service, and construct two (2) passenger cars for Mendocino’s excursion operations.

---

<sup>1</sup> Tunnel #1 work includes (1) all direct and ancillary tasks necessary to repair the 50 to 60 structurally impaired sets, which are wooden support beams located inside the tunnel (replacement of non-original materials) and (2) modernization to other sets (non-original materials) in partially collapsed Tunnel #1. Separately, Mendocino will replace worn tiles and rails. The work to be performed by Mendocino inside Tunnel #1 includes 975 ties and 81 sticks of rail.