

COURT FILE NUMBER 1603 09140  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF ROYAL BANK OF CANADA  
DEFENDANT GRAHAM BROTHERS CONSTRUCTION GROUP LTD.  
DOCUMENT **APPENDIX "C" AND "D" TO THE TENTH REPORT OF THE RECEIVER, DELOITTE RESTRUCTURING INC., DATED FEBRUARY 5<sup>TH</sup>, 2018**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Ogilvie LLP  
1400, 10303 Jasper Avenue  
Edmonton AB T5J 3N6  
Attention: Kentigern A. Rowan, Q.C.  
Phone: 780.429.6236  
Fax: 780.429.4453  
File No.: 3089.57

**Service will be accepted by delivery or fax. No other form of service will be accepted.**

**APPENDIX "C" AND "D" TO THE TENTH REPORT OF THE RECEIVER, DELOITTE RESTRUCTURING INC., DATED FEBRUARY 5<sup>TH</sup>, 2018**

# APPENDIX “C”

**IN THE MATTER OF THE COURT-APPOINTED RECEIVERSHIP OF  
 GRAHAM BROTHERS CONSTRUCTION GROUP LTD.**

**LOCOMOTIVE SALES PROCESS SUMMARY**

Name	SIP Sent	Notified of extended deadline	CA Received	Viewing	Offer Received	Offer Amount	Comments
Vallee-Jonction Railway, QC aka Musee Ferroviaire de Beauce	9/21/2017	11/7/2017					
Southern Prairie Railway, Ogema SK	9/21/2017	11/7/2017					
Vintage Locomotive Society, Winnipeg MB	9/21/2017	11/7/2017	10/12/2017	no viewing	11/14/2017	\$100,000	
Kettle Valley Steam Railway, Summerland (Penticton) BC	9/21/2017	11/7/2017					
Kamloops Heritage Railway, Kamloops BC	9/21/2017	11/7/2017					
Alberta Prairie Steam Tours, Stettler AB	9/21/2017	11/7/2017	9/27/2017	10/18/2017	no offer received		Follow ups unanswered
T.W. Graham	9/21/2017	11/7/2017	10/27/2017	no viewing	11/13/2017	\$50,000	
Ritchie Brothers Auction	9/21/2017	11/7/2017					
Century Services Corp. aka Century Auctions	9/21/2017	11/7/2017					
RM Sothebey's Ontario	9/21/2017	11/7/2017					
Canadian Pacific Railway	9/21/2017	11/7/2017					
ExpoRail	9/21/2017	11/7/2017					
Canadian Railroad Historical Association	9/21/2017						
Toronto Railway Museum	9/21/2017	11/7/2017					
Toronto Locomotive Preservation Society	9/21/2017	11/7/2017					
Toronto Railway Historical Association	9/21/2017						Not interested
Heritage Toronto	9/21/2017	11/7/2017					
Steam Whistle Brewing	9/21/2017	11/7/2017					
Toronto Terminals Railway	9/21/2017	11/7/2017					
Crossroads of America	9/21/2017	11/7/2017					
Railway & Locomotive Historical Society Inc.	9/21/2017	11/7/2017					
The Cranbrook Archives, Museum and Landmark Foundation (Camal Foundation)	9/21/2017	11/7/2017					
Revelstoke Railway Museum	9/21/2017	11/7/2017					
Via Rail	9/21/2017	11/7/2017					
Western American Railroad Museum	9/21/2017						
Northern American Railway Foundation	9/21/2017	11/7/2017					
Ennis-Paikin Steel Limited, Hamilton ON	9/21/2017	11/7/2017					
RailGiants Train Museum	9/21/2017	11/7/2017					

# APPENDIX “D”

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ASSET PURCHASE AGREEMENT

November 15, 2017

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ASSET PURCHASE AGREEMENT dated November 15, 2017

**BETWEEN:**

**DELOITTE RESTRUCTURING INC.**, in its capacity as Court-appointed Receiver of Graham Brothers Construction Group Ltd. and not in its personal or corporate capacity (the "Vendor")

- and -

**THE VINTAGE LOCOMOTIVE SOCIETY INC.** a corporation subsisting under the laws of Manitoba (the "Purchaser")

**WHEREAS:**

- A. Pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), the Alberta Court of Queen's Bench (the "Court") granted a receivership order with respect to all of the current and future assets, undertakings and properties of Graham Brothers Construction Group Ltd. (the "Debtor") on May 25, 2016 (the "Receivership Order") appointing the Receiver as the as the receiver and manager of all of the current and future assets, undertakings and properties of the Debtor; and
- B. In connection with the Receivership Proceedings (each as defined herein), the Vendor, subject to approval by the Court, has agreed to sell, transfer and assign to the Purchaser, all of the right, title and interest of the Vendor to the Purchased Assets, and the Purchaser has agreed to purchase the Purchased Assets from the Vendor, on the terms and conditions set forth herein.

**NOW THEREFORE** this Agreement witnesses that in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party to the other, the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions**

In this Agreement:

- (a) "Affiliate" means, with respect to any person, any other person or group of persons acting in concert, directly or indirectly, that controls, is controlled by or is under common control with such person. The term "control" as used in the preceding sentence means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person whether through ownership of more than 50% of the voting securities of such person, through being the general partner or trustee of the other person, or through contract or otherwise;
- (b) "Agreement" means this asset purchase agreement and any Schedule attached hereto;
- (c) "Applicable Law" means, in respect of any person, assets, transaction, event or circumstance:
  - (i) statutes (including regulations enacted thereunder);
  - (ii) judgments, decrees and orders of courts of competent jurisdiction;



- (iii) regulations, orders, ordinances and directives issued by Government Authorities; and
  - (iv) the terms and conditions of all permits, licences, approvals and authorizations;
- which are applicable to such person, asset, transaction, event or circumstance;
- (d) “**BIA**” has the meaning ascribed to that term in the recitals;
  - (e) “**Business Day**” means a day other than a Saturday, Sunday or any other day on which the principal chartered banks located in Calgary, Alberta are not open for the transaction of domestic business during normal banking hours;
  - (f) “**Claim**” means any right or claim of any person that may be asserted or made in whole or in part against the Vendor or any of its Affiliates and their respective directors, officers, employees, agents or advisors, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including, without limitation, any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) had the Vendor become bankrupt;
  - (g) “**Closing**” means the completion of the purchase by the Purchaser and sale by the Vendor of the Purchased Assets and the completion of all other transactions contemplated by this Agreement that are to occur contemporaneously with such sale, all subject to and in accordance with the terms and conditions of this Agreement;
  - (h) “**Closing Date**” means the date that is no later than November 21, 2017 or such other date as may be agreed to by the Vendor and the Purchaser;
  - (i) “**Court**” has the meaning ascribed to that term in the recitals;
  - (j) “**Court Approval**” means the approval of the Transaction by the Court;
  - (k) “**Data Room Information**” means all information made available (by the Receiver or otherwise) for the Purchaser’s review in relation to the Debtor, its Affiliates or the Purchased Assets;
  - (l) “**Debtor**” has the meaning ascribed to that term in the recitals;
  - (m) “**Deposit**” has the meaning ascribed to that term in Section 3.2;
  - (n) “**Effective Time**” means 12:01 a.m. (Edmonton time) on the Closing Date;
  - (o) “**Encumbrances**” means any pledges, liens, security interests, encumbrances, claims, charges, options or interests;

- (p) **"Environment"** means the components of the earth and includes ambient air, land, surface and subsurface strata, groundwater, surface water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems that include such components, and any derivative thereof shall have a corresponding meaning;
- (q) **"Environmental Liabilities"** means all past, present and future liabilities, obligations and expenses in respect of the Environment which relate to the Purchased Assets, or which arise in connection with the ownership thereof or operations pertaining thereto, including liabilities related to or arising from:
- (i) transportation, storage, use or disposal of toxic or hazardous substances;
  - (ii) release, spill, escape, emission, leak, discharge, migration or dispersal of toxic or hazardous substances; or
  - (iii) pollution or contamination of or damage to the Environment;
- including liabilities to compensate Third Parties for damages and Losses resulting from the items described in items (i), (ii) and (iii) above (including damage to property, personal injury and death) and obligations to take action to prevent or rectify damage to or otherwise protect the Environment;
- (r) **"Final Statement of Adjustments"** has the meaning ascribed to that term in Section 3.6;
- (s) **"GAAP"** means accounting principles generally accepted in Canada including those recommended or approved by the Canadian Institute of Chartered Professional Accountants at the relevant time including to the extent applicable, international financial reporting standards;
- (t) **"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, tribunal, commission, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government, having jurisdiction over a Party, the Purchased Assets or the Transaction;
- (u) **"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority;
- (v) **"GST"** means taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder; and **"GST Legislation"** means such act and regulations collectively;
- (w) **"Income Tax Act"** means, collectively, the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement), the *Income Tax Application Rules*, R.S.C. 1985, c.2 (5th Supplement) and the *Income Tax Regulations*, in each case as amended to the date hereof;
- (x) **"Interim Statement of Adjustments"** has the meaning ascribed to that term in Section 0;
- (y) **"Legal Proceeding"** means any litigation, action, suit, investigation, hearing, claim, complaint, grievance, arbitration proceeding or other proceeding and includes any appeal or review or retrial of any of the foregoing and any application for same;
- (z) **"Losses"** means any and all assessments, charges, costs, damages, debts, expenses, fines, liabilities, losses, obligations and penalties, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Applicable Law, Claim by any Governmental Authority or Governmental Order and those arising

**under any contract, agreement, arrangement, commitment or undertaking and costs and expenses of any Legal Proceeding, assessment, judgment, settlement or compromise relating thereto, and all interest, fines and penalties and reasonable legal fees and expenses incurred in connection therewith (on a full indemnity basis);**

- (aa) "Notice Period" has the meaning ascribed to that term in Section 8.2(b);
- (bb) "Parties" means, collectively, the Purchaser and the Vendor, and "Party" means any one of them;
- (cc) "Permits" means any permits required to transport, store, or operate the Purchased Assets.
- (dd) "Person" means any individual, corporation, limited or unlimited liability company, joint venture, partnership (limited or general), trust, trustee, executor, Governmental Authority or other entity;
- (ee) "Prime Rate" means the rate of interest, expressed as a rate per annum, designated by the main branch in Edmonton, Alberta of the Royal Bank of Canada as the reference rate used by it to determine rates of interest charged by it on Canadian dollar commercial loans made in Canada and which is announced by such bank, from time to time, as its prime rate, provided that whenever such bank announces a change in such reference rate then the "Prime Rate" for the purposes of this Agreement shall correspondingly change effective on the date the change in such reference rate is effective;
- (ff) "Purchased Assets" means the following property :

**Locomotive 1:**

Ex - CP 1286 was built by Canadian Locomotive Company in 1948. It has serial number CLC 2443.

List of parts stored separately:

- 1.Locomotive Headlight
- 2.Locomotive front number board.
- 3.Locomotive builders plates with serial numbers.
- 4.Locomotive whistle.
- 5.Locomotive bell.
- 6.Locomotive steam gauge.
- 7.Locomotive main rods.
- 8.Locomotive eccentric rods.
- 9.Tender builders plates with serial number.

**Locomotive 2:**

Ex - CP 1238 was built by Montreal Locomotive Works in 1946. It has serial number MLW 74898.

List of parts stored separately:

- 1.Locomotive Headlight
- 2.Locomotive front number board.
- 3.Locomotive builders plates with serial numbers.
- 4.Locomotive whistle.
- 5.Locomotive bell.
- 6.Locomotive steam gauge.
- 7.Locomotive main rods.
- 8.Locomotive eccentric rods.
- 9.Tender builders plates with serial number.

**Coal Cars**

- (gg) **"Purchase Price"** has the meaning ascribed to that term in Section 3.1;
- (hh) **"Receiver"** means Deloitte Restructuring Inc. in its capacity as the Receiver and Manager of all of the current and future assets, undertakings and properties of Graham Brothers Construction Group Ltd. and not in its personal or corporate capacity;
- (ii) **"Receivership Proceedings"** means Alberta Court of Queen's Bench Action No. 1603-09140.
- (ij) **"Receivership Order"** has the meaning ascribed to that term in the recitals;
- (kk) **"Representative"** means, in respect of a person, each director, officer, employee, agent, legal counsel, accountant, professional advisor and other representative of such person and its Affiliates, and with respect to the Vendor, includes the Receiver and their respective Affiliates, directors, officers, employees, agents, legal counsel, accountants, professional advisors and other representatives;
- (ll) **"Sales Process"** means the procedures for the sales solicitation process in relation to the Vendor;
- (mm) **"Tax Legislation"** means, collectively, the Income Tax Act and all Canadian federal, provincial, state, territorial, county, municipal and local, foreign, or other statutes, ordinances or regulations imposing a Tax, including all treaties, conventions, rules, regulations, orders, and decrees of any jurisdiction;
- (nn) **"Tax"** or **"Taxes"** means all taxes, assessments, charges, dues, duties, rates, fees, imposts, levies and similar charges of any kind lawfully levied, assessed or imposed by any Governmental Authority under any applicable Tax Legislation, including, Canadian federal, provincial, state, territorial, county, municipal and local, foreign or other income, capital, capital gains, goods and services, sales, use, consumption, excise, value added (including GST and Harmonized Sales Tax), business, real property, personal property, transfer, franchise, withholding, payroll, or employer health taxes, customs, import, anti-dumping or countervailing duties, Canada Pension Plan contributions, employment insurance premiums, and provincial workers' compensation payments, levy, assessment, tariff, impost, imposition, toll and duty, whether computed on a separate, combined, unitary, or consolidated basis or any other manner, including any interest, penalties and fines associated therewith;
- (oo) **"Third Party"** means any person who is not a Party, Affiliate or Representative;
- (pp) **"Third Party Claim"** means any Claim by a Third Party asserted against the Vendor for which the Purchaser has indemnified the Vendor or is otherwise responsible for pursuant to this Agreement;
- (qq) **"Time of Closing"** means 5:00 pm MST on the Closing Date or such other date and time as the Parties may agree in writing that the Closing shall take place;
- (rr) **"Transaction"** means the transaction for the purchase and sale of the Purchased Assets as contemplated in this Agreement; and
- (ss) **"Vendor's Interest"** means, when used in relation to any asset, undertaking or property, all the right, title and interest, if any, of the Vendor in such asset, undertaking or property.

## 1.2 Interpretation

The following rules of construction shall apply to this Agreement unless the context otherwise requires:

- (a) All references to monetary amounts, unless indicated to the contrary, are to the lawful currency of Canada.
- (b) Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.
- (c) The word "include" and derivatives thereof shall be read as if followed by the phrase "without limitation".
- (d) The words "hereto", "herein", "hereof", "hereby", "hereunder" and similar expressions refer to this Agreement and not to any particular provision of this Agreement.
- (e) The headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof.
- (f) Reference to any Article, Section or Schedule means an Article, Section or Schedule of this Agreement unless otherwise specified.
- (g) If any provision of a Schedule hereto conflicts with or is at variance with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail to the extent of the conflict.
- (h) All documents executed and delivered pursuant to the provisions of this Agreement are subordinate to the provisions hereof and the provisions hereof shall govern and prevail in the event of a conflict.
- (i) This Agreement has been negotiated by each Party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party does not apply to the construction or interpretation of this Agreement.

### **1.3 Interpretation if Closing Does Not Occur**

If Closing does not occur, each provision of this Agreement which presumes that the Purchaser has acquired the Purchased Assets shall be construed as having been contingent upon Closing having occurred.

## **ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS**

### **2.1 Agreement of Purchase and Sale**

Subject to the terms and conditions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase from the Vendor all of the Vendor's Interest in the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances.

### **2.2 Transfer of Purchased Assets**

Provided that Closing occurs and subject to the terms and conditions of this Agreement, possession, risk and beneficial ownership of the Purchased Assets shall transfer from the Vendor to the Purchaser on the Closing Date.

### **2.4 Assumption of Environmental Liabilities**

In determining the Purchase Price, the Parties have taken into account Purchaser's assumption of responsibility for the payment of all costs for existing or future Environmental Liabilities associated with the Purchased Assets, as set forth in this Agreement, and the absolute release of the Debtor and Vendor of all and any responsibility or liability therefor.

**ARTICLE 3  
PURCHASE PRICE**

**3.1 Purchase Price**

The purchase price to be paid by the Purchaser to the Vendor for the Purchased Assets shall be CAD \$100,000 (the "Purchase Price") as adjusted pursuant to Section 3.6.

**3.2 Deposit**

- (a) The Vendor acknowledges receipt of a deposit of CAD \$50,000 (the "Deposit") from the Purchaser.
- (b) The Deposit will be held in trust by the Receiver in an interest-bearing trust account for and on behalf of the Vendor, and shall be releasable in accordance with the terms of this Agreement. If Closing occurs in accordance with the terms and conditions of this Agreement, the Deposit and interest earned thereon shall be credited against the Purchase Price, in partial satisfaction of the Purchaser's obligation to pay the Purchase Price at Closing.
- (c) Following acceptance by the Court of this Agreement, if Closing does not occur for any reason (other than in the case of the Purchaser terminating this Agreement in accordance with Section 9.1), the Vendor shall be entitled to retain the Deposit, the full amount of the Deposit shall be forfeited to the Vendor, this Agreement shall thereupon terminate and each Party shall be released from all obligations and liabilities under or in connection with this Agreement. If Closing does not occur because the Purchaser has terminated this Agreement in accordance with Section 9.1, then the Deposit shall be refunded to the Purchaser. The Parties agree that the amount of the Deposit constitutes a genuine pre-estimate of liquidated damages representing the Vendor's Losses as a result of Closing not occurring and agree that the Vendor shall not be entitled to recover from the Purchaser any amounts that are in excess of the Deposit as a result of Closing not occurring. The Purchaser hereby waives any claim or defence that the amount of the Deposit is a penalty or is otherwise not a genuine pre-estimate of the Vendor's damages.

**3.3 Payment of the Purchase Price**

The Purchaser shall pay to the Receiver (in trust for and on behalf of the Vendor) at Closing, by certified cheque, bank draft or electronic wire transfer, the Purchase Price (including applicable GST), less the Deposit and interest earned thereon.

**3.4 Allocation of the Purchase Price**

The Purchase Price shall be allocated among the Purchased Assets as mutually agreed by the Parties on the Closing Date.

**3.5**

The Purchaser shall be solely responsible for all costs in preparing and registering and/or distributing any specific conveyances required in connection with the Transaction.

**3.6 GST**

The Purchase Price contemplated under this Agreement does not include GST. The Purchaser shall be liable for and pay to the Vendor the GST payable in connection with the purchase and sale of the Purchased Assets contemplated in this Agreement.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES**

**4.1 Purchaser's Representations and Warranties**

The Purchaser hereby represents and warrants to and in favour of the Vendor that:

- (a) the Purchaser is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation and has the requisite power and authority to enter into this Agreement and to complete the Transaction;
- (b) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement;
- (c) provided that the Court Approval is obtained, execution, delivery and performance of this Agreement by the Purchaser does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or materially delay the consummation by the Purchaser of the Transaction;
- (d) this Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser and is enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar Applicable Laws relating to creditors' rights generally and subject to general principles of equity;
- (e) the Purchaser is in compliance with all international trade laws and regulations including: (i) export and re-export controls specified in the U.S. Export Administration Regulations, International Traffic in Arms Regulations (ITAR), and the Bureau of the Census Foreign Trade Statistics Regulations (FTSR), or the Canadian Export and Import Permits Act; (ii) prohibitions on transactions with or transfers to the governments of, parties located in or operated from, or nationals of countries subject to U.S. and Canadian economic sanctions, and (iii) prohibitions on transactions with or transfers to entities or individuals identified on the U.S. government's List of Specially Designated Nationals and Blocked Persons (Treasury Department), Denied Persons List and Entity List (Commerce Department), and the Canadian government's lists of Designated Persons under the *United Nations Act*, *Criminal Code*, *Special Economic Measures Act* and *Freezing Assets of Corrupt Foreign Officials Act*. The Purchaser is not owned or controlled, directly or indirectly, by a prohibited person or entity or by an entity owned or controlled by a prohibited person or entity (or agent acting on such person or entity's behalf) as defined by the foregoing lists;
- (f) there is no requirement for the Purchaser to make any filing with, give any notice to, or obtain any authorization of, any Governmental Authority pursuant to the *Competition Act (Canada)*, as a result of, in connection with, or as a condition to the lawful completion of the Transaction; and
- (g) the Purchaser is not a non-Canadian person within the meaning of the *Investment Canada Act* nor a non-resident for the purposes of the *Income Tax Act*.

**4.2 No Representations and Warranties by the Vendor**

- (a) Neither the Vendor nor any of its Representatives makes any representations or warranties, and in particular, and without limiting the generality of the foregoing, the Vendor disclaims and neither the Vendor nor any of its Representatives shall be liable for any representation or warranty which may have been made or alleged to be made in any instrument or document related hereto, or in any

statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Vendor or any of its Representatives in connection with the Purchased Assets or in relation to the Transaction. For greater certainty, neither the Vendor nor any of its Representatives makes any condition, representation or warranty, express or implied, with respect to:

- (i) the value of any of the Purchased Assets or the future cash flow therefrom; or
  - (ii) the quality, condition, description, fitness for purpose, suitability, serviceability or merchantability of the Purchased Assets.
  - (iii) any defects, errors or omissions on or in the Purchased Assets, or any other conditions (whether patent, latent or otherwise), including, without limitation, environmental contamination (including Environmental Liabilities), affecting the Purchased Assets.
- (b) The descriptions of the Purchased Assets are for purposes of identification only and no condition, warranty, or representation has been or will be given by the Vendor concerning the accuracy, completeness or any other matter concerning those descriptions.
- (c) The Purchaser acknowledges and confirms that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets and that it is relying on its own investigations concerning the Purchased Assets and it has not relied on advice from the Vendor or any of its Representatives with respect thereto, including with respect to the matters specifically enumerated in Sections 4.2(a) and 4.2(b) the immediately preceding paragraphs in connection with the purchase of the Purchased Assets pursuant hereto. The Purchaser further acknowledges and agrees that it is acquiring the Purchased Assets on an "as is, where is" basis. The Purchaser acknowledges and agrees that it is familiar with the condition of the Purchased Assets, and that the Vendor has provided the Purchaser with a reasonable opportunity to inspect the Purchased Assets at the sole cost, risk and expense of the Purchaser and that the Purchaser is not relying upon any representation or warranty of the Vendor as to the condition of the Purchased Assets.
- (d) Except for its express rights under this Agreement, the Purchaser hereby waives all rights and remedies (whether now existing or hereinafter arising and including all common law, tort, contractual and statutory rights and remedies) against the Vendor and its Representatives in respect of the Purchased Assets or the Transaction or any representations or statements made or information or data furnished to the Purchaser or its Representatives in connection herewith (whether made or furnished orally or by electronic, faxed, written or other means).

## ARTICLE 5 COVENANTS

### 5.1 Leases, Licences and Third Party Consents

- (a) Both before and after Closing, the Purchaser shall use all commercially reasonable efforts to obtain any and all approvals, licences and permits required under Applicable Law and any and all material consents of Third Parties required to permit the Transaction to be completed or that may be required for the Purchaser to own and operate the Purchased Assets. The Purchaser acknowledges that the Vendor has no obligation to transfer any Leases, Permits or other permits or licences to the Vendor and that the Purchaser is solely responsible for obtaining consent to transfer the Leases. Without limiting the generality of the foregoing, it is the sole obligation of the Purchaser, at the Purchaser's sole cost and expense, to:
- (i) to obtain and pay the cost of any consents, permits, licences assignments, registration fees, attorney and agent fees, filing fees, issue fees or other authorizations and



assignments necessary or desirable for the transfer of such right, title and interest, to the Purchaser or for the operation or use of the Purchased Assets;

- (ii) to obtain all Third Party consents that are required to complete the Transaction and own and operate the Purchased Assets;
- (iii) provide any and all financial assurances that may be required by Governmental Authorities or any Third Parties to permit the transfer to the Purchaser of any of the Purchased Assets.

However, to the extent the Vendor is able to transfer any Permits and licences to the Purchaser, the Vendor will use reasonable commercial efforts to transfer such Permits and licences to the Vendor, provided that the Purchaser pays all costs associated with such transfer.

- (b) The Purchaser acknowledges that the receipt of applicable permits (including the Permits, if any) and licences that may be required to own and operate the Purchased Assets, the acquisition of the consents of Third Parties and the transfers of Leases shall not be a condition precedent to Closing and that the Purchaser may not obtain the consents of Third Parties or transfers of Leases at all.

## 5.2 Court Approval

The Vendor shall prepare all materials, and shall promptly apply to the Court for, and use its commercially reasonable efforts to obtain, the Court Approval as soon as reasonably practicable following the date hereof. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably request to obtain the Court Approval, including such information as may be required to reasonably evaluate the Purchaser's financial ability to perform its obligations hereunder. The application for the Court Approval may be adjourned or rescheduled by the Vendor or its Representatives upon notice to the Purchaser.

## 5.3 Environmental Matters

The Purchaser acknowledges that, insofar as the Environmental condition of the Purchased Assets is concerned, the Purchaser is acquiring the Purchased Assets pursuant hereto on an "as is, where is" basis. The Purchaser acknowledges that it is familiar and satisfied with the condition of the Purchased Assets, including the past and present use of the Purchased Assets, that the Vendor has provided the Purchaser with a reasonable opportunity to inspect the Purchased Assets at the sole cost, risk and expense of the Purchaser (insofar as the Vendor could reasonably provide such access) and that the Purchaser is not relying upon any representation or warranty of the Vendor as to the Environmental condition of the Purchased Assets, or as to any Environmental Liabilities. Provided that Closing has occurred, the Purchaser shall:

- (a) be solely liable and responsible for any and all Losses which the Vendor and its Representatives may suffer, sustain, pay or incur; and
- (b) indemnify, release and save harmless the Vendor and its Representatives from any and all Losses, actions, proceedings and demands, whatsoever which may be brought against or suffered by the Vendor or which the Vendor may sustain, pay or incur,

as a result of any matter or thing arising out of, resulting from, attributable to or connected with any Environmental Liabilities. Once Closing has occurred, the Purchaser shall be solely responsible for all Environmental Liabilities both to Third Parties and as between the Vendor and the Purchaser (whether such Environmental Liabilities occur or accrue prior to, on or after the Closing Date), and hereby releases the Vendor from any Claims the Purchaser may have against the Vendor with respect to all such liabilities and responsibilities. Without restricting the generality of the foregoing, the Purchaser shall be responsible for all Environmental Liabilities (whether such Environmental Liabilities occur or accrue prior to, on or after the Closing Date) in respect of the Purchased Assets. This assumption of liability and indemnity by the Purchaser shall apply without limit and without regard to cause or

causes, including the negligence (whether sole, concurrent, gross, active, passive, primary or secondary) or the wilful or wanton misconduct or recklessness of any or all of the Vendor, its Representatives and their respective successors and assigns or any other Person or otherwise. The Purchaser further acknowledges and agrees that it shall not be entitled to any rights or remedies as against the Vendor or its Representatives, or their respective successors and assigns under the common law or statute pertaining to any Environmental Liabilities, including the right to name any or all of the Vendor, its Representatives, and their respective successors and assigns as a 'third party' to any action commenced by any Person against the Purchaser. The Purchaser's assumption of liability and the indemnity obligation set forth in this Section 5.3 shall survive the Closing Date indefinitely.

## ARTICLE 6 CONDITIONS

### 6.1 Mutual Conditions

The respective obligations of the Parties to complete the Transaction are subject to the following conditions being fulfilled or performed as at or prior to the Time of Closing:

- (a) the Court has granted the Court Approval;
- (b) no injunction or other order has been issued to enjoin, restrict or prohibit the Transaction; and
- (c) the Closing is not otherwise prohibited by Applicable Law.

The foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and may be asserted by the Vendor or the Purchaser regardless of the circumstances and may be waived only with the Agreement of both the Vendor and the Purchaser.

### 6.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following condition being fulfilled or performed as at or prior to the Time of Closing:

- (a) the Vendor has complied with and performed, in all material respects, all of its covenants and obligations contained in this Agreement.

The foregoing condition is for the exclusive benefit of the Purchaser and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Purchaser may have. If the said condition has not been complied with or waived by the Purchaser at or before the Time of Closing, the Purchaser may terminate this Agreement by written notice to the Vendor.

### 6.3 Conditions for the Benefit of the Vendor

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed as at or prior to the Time of Closing:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects as at the Time of Closing with the same force and effect as if made at and as of such time and the Purchaser shall have delivered to the Vendor a certificate to that effect;
- (b) the Purchaser has complied with and performed in all material respects all of its covenants and obligations contained in this Agreement; and
- (c) no Party comprising the Vendor has lost its ability to convey the Purchased Assets or any of them due to an order of the Court or otherwise pursuant to the Receivership Proceedings, provided such

order or other action pursuant to the Receivership Proceedings is not at the voluntary initiative of the Vendor.

The foregoing conditions are for the exclusive benefit of the Vendor and may be waived by it in its sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the Vendor may have. If any of the said conditions have not been complied with or waived by the Vendor at or before the Time of Closing, the Vendor may terminate this Agreement by written notice to the Purchaser.

#### **6.4 Satisfaction of Conditions**

Each of the Parties shall proceed diligently and in good faith and use all commercially reasonable efforts to fulfill and assist in the fulfillment of the conditions set forth in Sections 6.1, 6.2 and 6.3. In addition, each of the Parties agrees not take any action that could reasonably be expected to preclude, delay or have an adverse effect on the Transaction or, in the case of the Purchaser, that would render, or may reasonably be expected to render, any representation or warranty made by the Purchaser in this Agreement untrue in any material respect.

### **ARTICLE 7 CLOSING**

#### **7.1 Closing Date and Place of Closing**

Subject to the conditions set out in this Agreement, the Transaction shall close and be completed on the Closing Date. The completion of the Transaction shall take place at the Time of Closing at the offices of the Receiver's solicitors, or at such other time or such other location as the Parties may agree in writing.

#### **7.2 Deliveries on Closing by the Vendor**

The Vendor shall deliver to the Purchaser at the Time of Closing:

- (a) a Court certified copy of the Court Approval;
- (b) all keys, codes, combinations and other access devices to the Purchased Assets in the Vendor's possession and control; and
- (c) such other documents as are required by this Agreement.

#### **7.3 Deliveries on Closing by the Purchaser**

The Purchaser shall deliver to the Vendor at the Time of Closing:

- (a) the Purchase Price payable in cash to the Vendor in accordance with Section 3.3; and
- (b) such other documents as are required by this Agreement.

#### **7.4 Risk and Insurance**

The risk of loss of the Purchased Assets shall remain with the Vendor until Closing. Any property, liability and other insurance maintained by the Vendor shall not be transferred as of the Time of Closing, but shall remain the responsibility of the Vendor until the Time of Closing. The Purchaser shall be responsible for placing its own property, liability and other insurance coverage with respect to the Purchased Assets in respect of the period from and after the Time of Closing.

**ARTICLE 8  
INDEMNITY**

**8.1 Indemnification Given by Purchaser**

If Closing occurs, the Purchaser shall:

- (a) be liable to the Vendor for; and
- (b) as a separate covenant, indemnify the Vendor and its Representatives from and against,

all Losses suffered, sustained, paid or incurred by any of them to the extent arising or accruing on or after the Effective Time and which relate to the Purchased Assets, including all Losses attributable to the ownership, operation, use, construction or maintenance of the Purchased Assets arising or accruing on or after the Effective Time and in respect of the indemnities specified in Section 5.3. The Purchaser's indemnity obligation set forth in this Section 8.1 shall survive the Closing Date indefinitely.

**8.2 Third Party Claims**

- (a) If the Vendor receives notice of the commencement or assertion of any Third Party Claim for which the Purchaser is liable pursuant to this Agreement, the Vendor shall give the Purchaser reasonably prompt notice thereof, but in any event no later than 14 days after receipt of such notice of such Third Party Claim. Such notice to the Purchaser shall describe the Third Party Claim in reasonable detail and shall indicate, if reasonably practicable, the estimated amount (or the method of computation of the amount) of the Loss that has been or may be sustained by the Vendor, and a reference to the provisions of this Agreement upon which such claim is based.
- (b) The Purchaser may participate in the defence of any Third Party Claim by giving notice to that effect to the Vendor not later than 14 days after receiving notice of that Third Party Claim (the "Notice Period") so long as: (i) the Purchaser first acknowledges to the Vendor, in writing, liability to the Vendor under this Agreement with respect to such Third Party Claim and that the outcome of such Third Party Claim does not alter or diminish the Purchaser's obligation to indemnify the Vendor pursuant to this Agreement, subject to the Purchaser's right to contest in good faith the Third Party Claim; (ii) the Purchaser has the financial resources to defend against the Third Party Claim and fulfill any indemnification obligations and has provided the Vendor with evidence thereof; (iii) the Third Party Claim involves monetary damages; and (iv) the Purchaser participates in the defence of the Third Party Claim actively and diligently. The Purchaser's right to do so shall be subject to the rights of any insurer or other third party who has potential liability in respect of that Third Party Claim. The Purchaser shall pay all of its own expenses of participating in or assuming such defence. The Vendor shall cooperate in good faith in the defence of each Third Party Claim and may participate in such defence assisted by counsel of its own choice at its own expense.
- (c) If the Vendor has not received notice within the Notice Period that the Purchaser has elected to participate in the defence of such Third Party Claim, or if the Purchaser has given such notice but thereafter fails or is unable to participate in the defence of such Third Party Claim actively and diligently, the Vendor may, at its option, elect to settle or compromise the Third Party Claim on terms of its choosing, or assume such defence assisted by counsel of its own choosing, and the Purchaser shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Vendor with respect to such Third Party Claim.

**8.3 Failure to Give Timely Notice**

A failure to give timely notice as provided in this Article 8 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was

deprived of its right to recover any payment under any applicable insurance coverage or was otherwise prejudiced as a result of such failure.

#### **8.4 No Merger**

There shall not be any merger of any liability or indemnity hereunder in any assignment, conveyance, transfer or document delivered pursuant hereto notwithstanding any rule of law, equity or statute to the contrary and all such rules are hereby waived.

### **ARTICLE 9 TERMINATION**

#### **9.1 Grounds for Termination**

This Agreement may be terminated at any time prior to Closing by either the Vendor or the Purchaser (as applicable) if the conditions for the benefit of the Vendor or Purchaser (as applicable) pursuant to the provisions of Article 6 are not satisfied or waived by or on the Closing Date.

#### **9.2 Effect of Termination**

Notwithstanding any termination of this Agreement by the Vendor or the Purchaser as permitted under Section 9.1, the provisions of Sections 10.1, 10.3, 10.4, 10.10 and 10.13 shall remain in full force and effect following any such permitted termination, and the Deposit shall be governed by Section 3.2.

### **ARTICLE 10 MISCELLANEOUS**

#### **10.1 Public Announcements**

If a Party intends to issue a press release or other public disclosure of this Agreement, the terms hereof or the Transaction, the disclosing Party shall provide the other Party with an advance copy of any such press release or public disclosure with sufficient time to enable the other Party to review such press release or other public disclosure and provide any comments. The disclosing Party shall not issue such press release or other public disclosure without the prior written consent of the other Party, such consent not to be unreasonably withheld.

#### **10.2 Obligations to Survive**

The obligations, covenants, representations and warranties (if any) of the Parties set out in this Agreement shall survive Closing, shall remain in full force and effect, shall not merge as a result of Closing and shall be binding on the Parties thereafter.

#### **10.3 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta, and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party irrevocably submits to the exclusive jurisdiction of the Court with respect to any matter arising hereunder or relating hereto.

#### **10.4 Damages**

Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any punitive, exemplary, consequential or indirect damages (including for greater certainty, any loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

#### **10.5 Further Assurances**

Each of the Parties hereto from and after the date hereof shall, from time to time, and at the request and expense of the Party requesting the same, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested to complete the Transaction and for more effectually carrying out the true intent and meaning of this Agreement.

#### **10.6 No Assignment by Purchaser**

The Purchaser shall not, without the Vendor's prior written consent, assign any right or interest in this Agreement, which consent may not be unreasonably withheld.

#### **10.7 Waiver**

No failure on the part of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any right or remedy in law or in equity or by statute or otherwise conferred. No waiver by any Party of any breach (whether actual or anticipated) of any of the terms, conditions, representations or warranties contained herein shall take effect or be binding upon that Party unless the waiver is expressed in writing under the authority of that Party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to any other or future breach.

#### **10.8 Amendment**

This Agreement shall not be varied in its terms or amended by oral agreement or by representations or otherwise other than by an instrument in writing dated subsequent to the date hereof, executed by a duly authorized representative of each Party.

#### **10.9 Time of the Essence**

Time is of the essence in this Agreement.

#### **10.10 Costs and Expenses**

Each Party shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisors) incurred by it in connection with this Agreement and the Transaction. No Party shall be responsible for the costs and expenses of the other Party.

#### **10.11 Notices**

Any notice, demand or other communication required or permitted to be given to any Party shall be given in writing and addressed as follows:

- (a) in the case of the Vendor or the Receiver:

Deloitte Restructuring Inc.  
2000 Manulife Place,  
10180 - 101 Street NW  
Edmonton, AB T5J 4E4

Attention: Chris Knox  
Fax: 780-421-3782  
Email: cknox@deloitte.ca

And with a copy to the Receiver's solicitors:

Ogilvie LLP  
1400 Canadian Western Bank Place  
10303 Jasper Avenue  
Edmonton, AB T5J 3N6

Attention : Mr. Kentigern Rowan, Q.C.  
Fax : 780-701-5936  
Email: krowan@ogilvielaw.com

(b) In the case of the Purchaser:

[Purchaser Name]  
THE VINTAGE LOCOMOTIVE SOCIETY INC.  
Attention: Robert S. Goch  
Fax: •  
Email: president@pdcrailway.com

And with a copy to the Purchaser's solicitors:

MONK GOODWIN LLP  
Attention: Richard N. Hoeschen  
Fax: (204) 957-0423  
Email: rhoeschen@monkgoodwin.com

Any such notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the Business Day of such delivery and if sent by facsimile or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received.

#### 10.12 Enurement

This Agreement shall be binding upon, and ensure to the benefit of, the Parties and their respective successors and permitted assigns.

#### 10.13 Third Party Beneficiaries

Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties and their successors and permitted assigns, and no person, other than the Parties and their successors and permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

#### 10.14 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision validity or enforceability in any other jurisdiction.

**10.15 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancel and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect to the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, whether oral or written, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof other than those contained in this Agreement.

**10.16 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic means of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

IN WITNESS WHEREOF this Agreement has been properly executed by the Parties as of the date first above written.

**DELOITTE RESTRUCTURING INC.,**

**in its capacity as the Court-appointed Receiver of  
Graham Brothers Construction Group Ltd.**

**And not in its personal or corporate capacity**

Per:

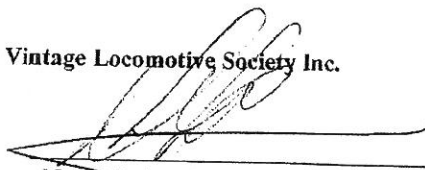


Name: Darren Crocker, CPA, CGA, CIRP, LIT

Title: Senior Vice-President

**The Vintage Locomotive Society Inc.**

Per:



Name: Robert S. Goch M.M.M.

Title: President