

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. AB 1261

ENTERED
Office of Proceedings
October 5, 2021
Part of
Public Record

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ADVERSE ABANDONMENT
SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y.

AMENDED¹ MOTION TO DISMISS ADVERSE ABANDONMENT PROCEEDING²

William A. Brandt, Jr., solely in his capacity as the chapter 11 trustee (the “Trustee”) for the bankruptcy estate of the San Luis & Rio Grande Railroad, Inc. (“SLRG”), the parent of Saratoga and North Creek Railway, LLC, by and through counsel, hereby files his motion to dismiss the above-reference proceeding.

On March 30, 2020, the Trustee filed a voluntary petition under chapter 11 on behalf of Saratoga and North Creek Railway, LLC (“SNCR”). SNCR’s bankruptcy case is pending before the United States Bankruptcy Court for the District of Colorado, Case No. 20-12313-TBM (the “Bankruptcy Case”).

BACKGROUND

On September 7, 2018, the New York State Department of Environmental Quality (DEC) initiated an adverse abandonment proceeding before this Board asserting that public convenience and necessity required the abandonment by SNCR of a 30-mile section of railroad commonly

¹ This motion is amended to clarify that the Town of Newcomb, as opposed to the Town of Corinth, actively opposes the abandonment petition. The SNCR Line crosses the Town of Newcomb’s boundaries and the Town of Newcomb has continuously opposed this abandonment proceeding and supported all efforts to return freight and or passenger rail service to the Line.

² The Board has requested a status report from the Trustee. The factual background along with the attached plan of reorganization and asset purchase agreement constitute the current status of the SNCR bankruptcy case.

known as the Sanford Lake Branch or the Tahawus Line (the Line) between milepost 0.0 at North Creek, New York and the Line's terminus near the former Tahawus Mine at milepost NC 29.71. The Line is located primarily in Essex County, New York with a portion in Hamilton County, New York. Although SNCR had been operating over tracks belonging to the Town of Corinth and Warren County, the DEC did *not* seek abandonment of SNCR's authority to operate over the tracks between North Creek to Saratoga Springs.

Almost immediately after the filing of the Application, on September 21, 2018, OmniTRAX Holdings Combined, Inc. filed a notice requesting to participate in the abandonment proceeding. The abandonment proceeding was then stayed to provide time for OmniTRAX and SNCR to negotiate a potential purchase of the Line by an OmniTRAX subsidiary for the purpose of restoring common carrier operations to the Line. Unfortunately, OmniTRAX and SNCR never reached an agreement for the purchase of Line. On June 14, 2019, OmniTRAX informed the Board that although it decided to discontinue negotiations with SNCR, it believed that "the Tahawus Line possesses sound commercial prospects for the right operator."

Then, on September 12, 2019, as part of a loan default proceeding, San Luis & Rio Grande, Inc. ("SLRG"), the parent of SNCR, was placed into receivership. See *Big Shoulders Capital LLC v. San Luis & Rio Grande R.R.*, Case No. 19-cv-06029 (N.D. Ill.). Novo Advisors was appointed as receiver (the "Receiver") in that proceeding. On October 18, 2019, the U.S. District Court for the Northern District of Illinois issued an order expanding the receivership to include certain SLRG affiliates and subsidiaries, including the Saratoga and North Creek Railroad ("SNCR"). *Big Shoulders Capital*, Case No. 19-cv-06029 (Oct. 18, 2019 Amended Receivership Order) (N.D. Ill.). In its Initial Report of Property and Known Liabilities, the receiver listed SNCR's track and

roadbed as an asset. *Big Shoulders Capital*, Case No. 19-cv-06029 (Nov. 8, 2019 Initial Report, App. 2) (N.D. Ill.).

On October 16, 2019, several creditors filed an involuntary bankruptcy petition against SLRG in the U.S. Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”). See *In re San Luis & Rio Grande R.R.*, Case No. 19-18905-TBM (Bankr. D. Colo.) (the “SLRG Bankruptcy Case”).

Because SLRG is a “railroad” as that term is defined under the Bankruptcy Code, special provisions unique to railroad reorganizations apply to the SLRG Bankruptcy Case. Specifically, the Surface Transportation Board and the Department of Transportation have the absolute right to raise and appear on any issue in a railroad case. 11 U.S.C. § 1164. Further, a trustee must always be appointed in railroad reorganizations, and the Secretary of Transportation chooses and submits to the United States trustee a list of five persons who are qualified to serve as a trustee of a railroad. The SLRG Trustee was on the list submitted by the Secretary of Transportation. 11 U.S.C. § 1163. On December 30, 2019, the SLRG Trustee was appointed as chapter 11 trustee for the SLRG Bankruptcy Case. In short, the SLRG Trustee was chosen by the Department of Transportation to operate SLRG due to his specific railroad experience and acumen.

SNCR is a separate legal entity from SLRG. The Bankruptcy Court authorized, but did not direct, the SLRG Trustee to file a bankruptcy petition on behalf of SNCR. After discussions with the Surface Transportation Board and other interested parties regarding SNCR, the SLRG Trustee determined that it would be in the best interests of SNCR’s creditors and the public to file a bankruptcy petition on SNCR’s behalf. SNCR’s voluntary petition under chapter 11 of the Bankruptcy Code was filed on March 30, 2020.

After the filing of the bankruptcy petition, the SLRG Trustee began the process of marketing and selling SNCR's assets to potential operators of a railroad. After approximately a year of active marketing, SNCR has entered into an Asset Purchase Agreement with Revolution Rail Holding Company, LLC ("Revolution Rail"), whereby Revolution Rail will be the "stalking horse bidder" at a post-confirmation sale. Revolution Rail agreed to purchase the Line and other Saratoga assets for \$700,000.00 in cash. In a nutshell, the Asset Purchase Agreement forms the basis for the feasibility of the Plan of Reorganization in the SNCR bankruptcy case. Specifically, once the Plan is confirmed, and using the Asset Purchase Agreement as the base line or "stalking horse" bid, the SLRG Trustee will set a deadline for all interested parties to submit bids to participate in an auction of the Debtor's assets. If the SLRG Trustee receives bids for Saratoga's assets at a higher and better price with all other terms identical to those in the Asset Purchase Agreement, the SLRG Trustee will conduct an auction of all of the Saratoga assets. Whomever submits the highest and best bid for SNCR's assets will be the ultimate purchaser. A copy of the Plan of Reorganization to which the Asset Purchase Agreement is an exhibit is attached hereto as **Exhibit 1**.

Importantly and critically, the Asset Purchase Agreement anticipates Revolution Rail's assumption of SNCR's "common carrier" status as an operating railroad. Such "common carrier" status, in conjunction with the requisite authorization by the Surface Transportation Board, will permit Revolution Rail (or other purchaser) to provide public passenger and/or freight service across the Line in the future.

In light of the anticipated sale of the Line, the SLRG Trustee hereby files this motion to dismiss this abandonment proceeding.

ARGUMENTS AND AUTHORITIES

A. Standards for Abandonment

The substantive legal standard applicable to abandonment applications is that "present or future public convenience and necessity require or permit the abandonment." 49 U.S.C. § 10903(a) (Supp. V 1981). In deciding whether to grant an application for abandonment under 49 U.S.C. § 10903(d), the Board, considers whether there is a present or future need for rail service over the line and whether that need is outweighed by other interests. See, e.g., *Port of Benton—Adverse Discontinuance of Rail Serv.—Tri-City R.R.*, AB 1270, slip op. at 4-5 (STB served Oct. 31, 2019). Specifically, the Board weighs the relative burdens that continuing or ceasing rail service would have on all of the potentially affected interests, including the railroad, the owners of the property (if different from the carrier), shippers, the national rail network, and the broader public.

In this instance, SNCR, “the railroad”, has not requested abandonment. Instead, an “adverse” abandonment application has been filed by the New York State Department of Environmental Quality. In an adverse discontinuance case, the burden of proof is on the applicant. *State of S.D. ex rel. Dept. of Transp.—Adverse Discontinuance of Operating Auth.—Napa-Platte Reg’l R.R. Auth.*, AB 1253 (STB served June 27, 2018). In general, the Board is reluctant to grant adverse abandonment when there is a rail carrier that claims it is ready, willing, and able to provide service, and there is a shipper that claims to want service. See *New York Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1185-86 (D.C. Cir. 2004).

1. The Railroad Opposes Abandonment

SNCR vehemently opposes abandonment of the Line. To be sure, prior to the appointment of the SLRG Trustee, the former management of SNCR appeared to consent to the abandonment of the Line. However, SNCR's actions must be placed into context and critically, such "consent" had no legal effect.

To wit, SNCR is an indirect subsidiary of Iowa Pacific Holdings, LLC ("Iowa Pacific"). In 2019, Iowa Pacific and its subsidiaries were in dire financial straits. Iowa Pacific and its material subsidiaries (which included SNCR) were in default under their secured credit agreement with their secured lender, Big Shoulders Capital, LLC, and collectively owed millions of dollars of unpaid railroad withholding taxes to the IRS. As a result, as discussed above, on September 12, 2019, SLRG, the parent of SNCR, was placed into receivership. See *Big Shoulders Capital LLC v. San Luis & Rio Grande R.R.*, Case No. 19-cv-06029 (N.D. Ill.). Novo Advisors was appointed as receiver (the "Receiver") in that proceeding. On October 18, 2019, the U.S. District Court for the Northern District of Illinois issued an order expanding the receivership to include certain SLRG affiliates and subsidiaries, including SNCR. It is against this backdrop, and only after the negotiations with OmniTRAX fell through, that SNCR, under the putative control of the Receiver, "consented" to the abandonment of the line.

However, such consent has no legal effect. On October 16, 2019, two days *prior* to the District Court Order expanding the receivership to include SNCR, an involuntary bankruptcy petition was filed against SLRG. The filing of the bankruptcy petition divested the U.S. District Court for the Northern District of Illinois of its jurisdiction over "all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate" in favor of the jurisdiction of the federal bankruptcy court. 28 U.S.C. § 1334(e)(1). SLRG's property included its ownership interests

in SNCR. Accordingly, the Receiver could no longer had the legal authority to act on behalf of SNCR and its *consent* to abandonment must be disregarded.

On December 30, 2019, the SLRG Trustee was appointed as chapter 11 trustee for the bankruptcy estate of SLRG in the Bankruptcy Case. The SLRG Trustee was chosen by the Department of Transportation to operate SLRG due to his specific railroad experience and acumen. After the filing of a bankruptcy petition upon SNCR's behalf, the SLRG Trustee engaged in active discussions and negotiations with potential purchasers of the SNCR's assets who would restart railroad operations. Unfortunately, due to the economic and social realities of the COVID-19 pandemic, the SLRG's ability to effectuate a sale of SNCR was delayed.

The SLRG Trustee has now entered into an Asset Purchase Agreement with Revolution Rail on SNCR's behalf. SNCR has also filed a proposed plan of reorganization in its bankruptcy case, based upon the Revolution Rail Asset Purchase Agreement. Revolution Rail has actively and consistently opposed this abandonment proceeding, and based upon its prior filings with the Board, plans on maintaining SNCR's common carrier status and plans to reinstate passenger and perhaps freight service on the Line. Accordingly, SNCR opposes the abandonment proceeding.

2. Potential Shippers Oppose Abandonment.

In its application for adverse abandonment, the DEQ identified two potential freight shippers upon the Line: Mitchell Stone Products and Barton International. The DEQ claims that neither party has expressed a concrete interest in contracting to ship freight by rail. However, both shippers oppose the abandonment petition. Mitchell Stone Products has filed a statement in opposition to the abandonment proceeding asserting that the abandonment would cause its business "irreparable harm" by enjoining an avenue that Mitchell Stone Products could use to

expand its business in the future. Additionally, in conjunction with this Motion, Mitchell Stone Products has reinstated its opposition to the abandonment. *See* Exhibit 2 attached hereto. Specifically, Mr. Mitchell reiterates his support for “keeping the [SNCR] as a viable freight service line.” Mr. Mitchell discusses “a significant marking opportunity that has been recently presented to [him] that could only be served by rail.” The possibility of utilizing freight rail service “would be beneficial to me, to the local community, and to the economic development goals of Essex County, especially in light of the pending infrastructure bill in Washington.” Thus, a future opportunity for rail service on the Line exists.

3. Essex County and the Town of Newcomb Oppose Abandonment

As shown on the maps attached to the abandonment petition, the vast majority of the Line transverses Essex County. A critical component in any abandonment proceeding is the weighing of the economic interests in favor of maintaining rail service in the region. Section 10903(d) provides that “the Board shall consider whether abandonment or discontinuance will have a serious, adverse impact on rural and community development.” 49 U.S.C. § 10903(d). It cannot be disputed that Essex County is rural, and Essex County, along with the Town of Newcomb, has continuously and consistently opposed the abandonment petition. In particular, these entities support the Line remaining “a living, not a dying enterprise.” *See* Exhibit 3 attached hereto. Further, they anticipate that the future use of the Line for passenger and/or freight service could “bring a considerable amount of tax revenue to Essex County, add potential jobs to our remote location and reduce carbon emissions into the atmosphere generated by truck haulage.” Given that the Line is located in Essex County, the statement of Mr. Gilliland, the Chairman of the Essex County Board of Supervisors, must be given considerable weight. It is Essex County that has a direct economic interest in the maintenance of the Line.

4. Public Interest

The public interest supports denial of the abandonment petition. First, as noted above, Essex County, where the Line is located, opposes abandonment; and Essex County and the Town of Newcomb *support* Saratoga's efforts to sell the Line as a going concern through its plan of reorganization. Second, Saratoga is in the midst of a federal bankruptcy proceeding and has filed a plan of reorganization in which it intends to sell the Line as a going concern. Saratoga contends that the value of the Line as a going concern exceeds its value to Saratoga's creditors if the Line were to be liquidated, *ie*, the liquidation value of its tracks if they were to be removed and sold for scrap. Accordingly, Saratoga's creditors, who include local businesses and individuals, will most likely obtain a higher return on their unsecured claims against the Saratoga estate if the Line is sold as a going concern. Thus, the public interest weighs in favor of denying the abandonment petition.

CONCLUSION

"The function of the Board's regulatory authority with respect to abandonments or discontinuance of rail service is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service." *Waterloo Ry.*, AB 124 (Sub-No. 2) et al., slip op. at 5. Simply stated, the railroad and a potential shipper support the continuance of the possibility of rail service over the Line. There is no need to "abandon" the Line when the most relevant interested parties support its continued existence as a potential for economic development in the region.

Accordingly, on behalf of Saratoga, the SLRG Trustee requests that the Surface Transportation Board deny the Adverse Abandonment petition, grant this motion to dismiss, and for such other and further relief as the Board deems proper.

Dated: October 4, 2021

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

s/ Jennifer Salisbury

James T. Markus, Co. Reg. #25065

Jennifer Salisbury, Co. Reg. #37168

1750 Sherman Street, Suite 1950

Denver, Colorado 80203

Telephone (303) 830-0800

Facsimile (303) 830-0809

jsalisbury@markuswilliams.com

*Counsel for the Trustee and Saratoga and
North Creek Railway, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2021, I caused a true and correct copy of Amended Motion to Dismiss Adverse Abandonment Proceeding, Docket No. AB 1261, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION--ADVERSE ABANDONMENT-- SARATOGA AND NORTH CREEK RAILWAY IN TOWN OF JOHNSBURG, N.Y. to be filed electronically with the Surface Transportation Board's E-Filing System and sent via First- Class mail to the following Parties of Record:

Shaun Gilliland
7559 Court Street
Elizabethtown , NY 12932

P.O. Box 217
Elizabethtown, NY 12932

David Michaud
10 South Lasalle Street
Suite 3300
Chicago, IL 60603

Daniel Elliott
2000 Pennsylvania Avenue NW
Suite 7000
Washington, DC 20006

Peter Bauer
PO Box 48:
North Creek, NY 12853

Joshua M. Tallent
The Capitol Office Of The Attorney General
Albany, NY 12224-0341

Honorable Charles E. Schumer
322 Hart Senate Office Building
Washington, DC 20510

Micheal Dupee
PO Box 202
North Creek, NY 12853

Gerald Delaney
326 Downs Rd
Cadyville, NY 12918

William Kuntz, III
PO BOX 1801
Nantucket Island, MA 02554-1801

Bonney Hartley
65 1st Street
Troy, NY 12180

Douglas Mackey
P.O. Box 189
Waterford, NY 12188-0189

U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Paul J Mitchell
15 Mitchell Lane
Tupper Lake, NY 12986

U.S. Fish And Wildlife Service
3817 Luker Road
Cortland, NY 13045-1330

D. Scott Bassinson
Three Empire State Plaza
Albany, NY 12223-1350

Darren Darrah
7566 Court Street

Claudia Braymer
PO Box 2369
Glens Falls, NY 12801-1280

Susan L. Taylor
The Capitol Office Of The Attorney General
Albany, NY 12224-0341

Philip L. Gallos
33 Baker Street
Saranac Lake, NY 12983

Thomas S. Berkman
625 Broadway, 14Th Floor
Albany, NY 12233-1010

Donn Meindertsma
1850 M Street NW
Suite 600
Washington, DC 20036

Steven Potter
64 Talbot Way
Long Lake, NY 12847

Jennifer M. Salisbury
1750 Sherman St.
Suite 1950
Denver, CO 80203

Nicholas Buttino
The Capitol
Albany, NY 12223

Robin T. DeLoria
5639 State Route 28N
P.O. Box 405
Newcomb, NY 12852

Mr. Arnold Printup
412 State Route 37
Akwesance, NY 13655

William C. Janeway
103 Hand Avenue, Suite 3
P.O. Box D-2

Elizabethtown, NY 12932-0640

Robert W. Terwilliger
1340 State Route 9
Lake George, NY 12845

Ms. Amy Gitchell
1 Buffington Street, Building 10, 3Rd Floor
North
Watervliet, NY 12189-4000

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re	)	
	)	Case No. 20-12313
SARATOGA AND NORTH CREEK	)	
RAILWAY, LLC, an Illinois limited	)	Chapter 11
liability company	)	
	)	
Debtor.		

**SARATOGA AND NORTH CREEK RAILWAY, LLC'S
CHAPTER 11 PLAN OF LIQUIDATION DATED SEPTEMBER 30, 2021**

Saratoga and North Creek Railway, LLC ("Saratoga" or the "Debtor"), proposes the following Chapter 11 Plan of Liquidation pursuant to Sections 1121(a) and 1123(a)(5)(D) and (b)(4) of the Bankruptcy Code.

INTRODUCTION

Saratoga and North Creek Railway, LLC (the "Debtor") is an Illinois limited liability company. The Debtor filed its voluntary petition under Chapter 11 of the United States Bankruptcy Code on March 30, 2020.

This Chapter 11 Plan of Liquidation (the "Plan") provides that the real property, personal property, and all other assets of the Debtor on the Effective Date will be vested in the Reorganized Debtor, subject to the control and oversight of the Plan Administrator, who shall be the Reorganized Debtor's sole officer and director after the Effective Date. The Plan Administrator, as the Reorganized Debtor's sole officer and director, will be delegated authority to and charged with the orderly liquidation of all real property, equipment, and any property of the Debtor vested in the Reorganized Debtor, and distributing the proceeds of those assets to creditors of the Debtor based on the amounts of their respective Allowed Claims.

Additional information regarding this Plan is contained in the Disclosure Statement for the Chapter 11 Plan of Liquidation dated September 30, 2021, as defined herein and filed simultaneously this Plan.

Your rights may be affected by this Plan. You should read the Plan and Disclosure Statement carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

ARTICLE I DEFINITIONS

Unless otherwise provided in this Plan, all terms used herein that are defined or used in the Bankruptcy Code are intended to be used in this Plan as defined or used in the Bankruptcy Code. The following capitalized terms shall have the meanings set forth below, and such meanings shall be equally applicable to the singular and plural forms of the terms.

1.1 “Administrative Claim” shall mean a Claim for payment of an administrative expense or cost of a kind specified in Section 503(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a) of the Bankruptcy Code, including, but not limited to: (i) the actual and necessary costs and expenses, incurred after the Petition Date, of preserving the estate and operating the business of the Debtor; (ii) all Professional Fee Claims approved by the Bankruptcy Court as final; (iii) all fees and charges assessed against the estate under 28 U.S.C. § 1930; and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court.

1.2 “Allowed” when used with respect to a Claim other than an Administrative Claim, shall mean a Claim that is: (i) allowed pursuant to this Plan or Final Order of the Court; or (ii) the subject of a proof of Claim of which was filed on or before the applicable Bar Date for filing proofs of Claim or requests for payment of Claims of such type against the Debtor; and in any case as to which no objection as to the allowance thereof has been or will be interposed or as to any such objection there has been a Final Order entered allowing such Claim; or as to which any such objection has been determined by a Final Order allowing all or a portion of such Claim. “Allowed” when used with respect to a Claim that is an Administrative Claim, shall mean an Administrative Claim that has been allowed pursuant to the Plan or allowed pursuant to a Final Order of the Bankruptcy Court.

1.3 “Assets” shall mean, collectively, all of the legal and equitable rights in and to all assets, property, interests and affects, real and personal, tangible and intangible, wherever situated, held at any time by the Estate including, without limitation, all Causes of Action or other Claims belonging to the Estate or the Debtor or belonging to any creditor, and which Assets shall, on the Effective Date, vesting in the Reorganized Debtor in the manner described in this Plan and in Article VI of the Plan and includes, without limitation, the Saratoga Assets, cash, accounts, equipment and other assets of the Debtor.

1.4 “Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*

1.5 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the District of Colorado.

1.6 “Big Shoulders” shall mean Big Shoulders Capital, LLC.

1.7 “Big Shoulders Collateral” shall mean the first priority lien in the amount of \$300,000.00 on the Saratoga Real Property and the first priority lien on the Personal Property.

1.8 “Big Shoulders Loans” shall mean those loans originally extended by Big Shoulders to the Debtor and its affiliates, evidenced by a Promissory Note in the Original Principal Amount of \$3,000,000.00.

1.9 “Causes of Action” shall mean all Claims, and any and all manner of actions, causes of action in law or in equity, suits, adversary proceedings, contested matters, objections, controversies, agreements, promises, debts, liens, contracts, liabilities, demands, obligations, damages, loses, fees, costs, expenses, set-offs, defenses, counter-claims, cross-claims, third-party claims, or claims for recoupment, rights to legal remedies, rights to equitable remedies, rights to payment and claims, rights of indemnification or contribution that the Estate may hold against any Person, of any nature whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, now owned or hereinafter acquired by the Debtor or the Estate, whether arising under any contract or under the Bankruptcy Code or other federal or state law, and whether or not such Causes of Action have been commenced, pursued or asserted prior to the Effective Date including without limitation: any Recovery Claims; any claims or objections related to Professional Fee Claims; and any claims or other causes of action which may be identified in discovery. Any and all Causes of Action and any proceeds therefrom are preserved for the Reorganized Debtor as set forth in this Plan. Except as may be otherwise provided for in the Plan or approved by the Court prior to the Effective Date, no such Causes of Action shall be released.

1.10 “Chapter 11 Case” shall mean the voluntary case commenced under Chapter 11 of the Bankruptcy Code by the Debtor in the Bankruptcy Court on the Petition Date at Case Number 20-12313-TBM.

1.11 “Claim” shall mean a claim, as defined in Section 101(5) of the Bankruptcy Code.

1.12 “Class” shall mean any class of creditors or interests described in Article II of the Plan.

1.13 “Confirmation” shall mean the entry by the Bankruptcy Court of an order confirming the Plan in accordance with Section 1129 of the Bankruptcy Code.

1.14 “Confirmation Date” shall mean the date of the entry of the Confirmation Order.

1.15 “Confirmation Hearing” shall mean the duly noticed hearing held by the Bankruptcy Court pursuant to Section 1128 of the Bankruptcy Code to consider Confirmation of the Plan. The Confirmation Hearing may be adjourned by the Bankruptcy Court from time to time without further notice other than the adjourned date of the Confirmation Hearing.

1.16 “Confirmation Order” shall mean the Order entered by the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.

1.17 “Debtor” shall mean Saratoga and North Creek Railway, LLC.

1.18 “Disclosure Statement” shall mean the document filed, or to be filed, in connection with this Plan pursuant to Section 1125 of the Bankruptcy Code and approved by the Court as containing “adequate information” as that term is defined in Section 1125(a)(1) of the Bankruptcy Code, and any exhibits annexed thereto and any documents delivered in connection therewith, as the same may be amended from time to time by any duly authorized amendment or modification.

1.19 “Disputed Claim” means any (i) Claim which is not an Allowed Claim, including, without limitation, any Claim designated as disputed, contingent or unliquidated in Debtor’s schedules filed in connection with this case, (ii) any Claim against which an objection to the allowance or motion for the disallowance thereof has been, or will be, interposed, and as to which no Final Order has been entered, or (iii) any Claim which is the subject of one or more Causes of Action pending against the Holder of such a Claim.

1.20 “Distribution” shall mean any distribution made pursuant to the Plan and Reorganized Debtor, including payments made under the Plan to Holders of Administrative and Priority Claims.

1.21 “Effective Date” shall mean the first business day after entry of a Final Order on confirmation of the Plan.

1.22 “Entity” shall have the meaning assigned in Section 101(15) of the Bankruptcy Code.

1.23 “Estate” shall mean the Debtor’s bankruptcy estate created pursuant to Section 541 of the Bankruptcy Code upon the filing of the Debtor’s Chapter 11 petition, including any post-petition additions.

1.24 “Final Decree” shall mean a Final Order of the Bankruptcy Court closing the Chapter 11 Case.

1.25 “Final Order” shall mean an order or judgment of the Bankruptcy Court or other court of competent jurisdiction, in connection with the Debtor’s Chapter 11 Case or proceedings therein, which has not been reversed, stayed, modified, or amended and as to which (i) the time to appeal or seek review, rehearing, or certiorari has expired (without regard to whether the time to seek relief of a judgment under Rule 60(b) of the Federal Rules of Civil Procedure has expired); and (ii) no appeal or petition for review, rehearing, or certiorari is pending, or if pending as to which no bond or other stay has been issued, or as to which any right to appeal or seek review, rehearing, or certiorari has been waived in writing in a manner satisfactory to the Plan Administrator. Notwithstanding the foregoing, the Plan Administrator may elect to treat any order which is not subject to a stay as a Final Order under the provisions of this Plan.

1.26 “Final Tax Day” shall mean, with respect to the Estate, the last day which shall be included in a taxable year for which an income tax return is required to be filed by the Estate or the Plan Administrator.

1.27 “Holder” shall mean the beneficial owner of any Claim.

1.28 “Holder of an Allowed Claim” shall mean any Holder of an Allowed Claim against the Debtor.

1.29 “Impaired” shall mean a Claim whereby the legal, equitable and/or contractual rights of the Holder of such Claim are altered under the Plan.

1.30 “Initial Distribution Date” shall mean the date occurring on or as soon as practicable after the Effective Date, upon which an initial Distribution is made by the Plan Administrator in his sole discretion to Holders of Allowed Claims entitled to receive distributions under this Plan; provided however, the Plan Administrator shall use his best efforts to ensure that the Initial Distribution Date occurs on or before ninety (90) days following the Confirmation Date.

1.31 “Insider” means any Person or Entity who is an insider as such term is defined in Section 101(31) of the Bankruptcy Code.

1.32 “IRS” means the Internal Revenue Service.

1.33 “Late Filed Claims” shall mean any Claims that are not Administrative Claims filed in the Debtor’s Chapter 11 Case after the Bar Date.

1.34 “Liquidation Expenses” shall mean all costs, fees and expenses associated or incurred by the Reorganized Debtor, acting thru the Plan Administrator, and its Professionals if any, in connection with the implementation and consummation of the Plan, the liquidation of Assets, Claims and Causes of Action belonging to the Estate and the Reorganized Debtor.

1.35 “Person” shall mean an individual, corporation, limited liability company, partnership, association, joint stock company, joint venture, estate, trust, unincorporated organization or government, governmental unit, or any subdivision thereof or any other Entity.

1.36 “Petition Date” shall mean March 30, 2020, the date the Debtor filed its voluntary bankruptcy petition.

1.37 “Plan” shall mean this plan, and any exhibits annexed hereto and any documents delivered in connection herewith as the same may be amended from time to time by any duly authorized amendment or modification as may hereinafter be filed by the Debtor or the Plan Administrator.

1.38 “Plan Administrator” shall mean William A. Brandt, Jr., a director of Development Specialists, Inc., the Person appointed pursuant to this Plan to serve as the Plan Administrator as set forth in the Plan, who has experience and expertise in supervising or administering the affairs of a bankruptcy estate and who shall have all powers and authority to execute the terms of the Plan as the Reorganized Debtor’s officers and director.

1.39 “Postpetition” shall mean any time on or subsequent to the Petition Date and prior to the Effective Date.

1.40 “Prepetition” shall mean any time prior to the Petition Date.

1.41 “Priority Non-Tax Claim” shall mean an Allowed Claim that is entitled to priority under Section 507(a)(3)-(a)(7) of the Bankruptcy Code.

1.42 “Priority Tax Claim” shall mean an Allowed Claim that is entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

1.43 “Professional” shall mean any professional or Person employed or appointed with Court approval to provide professional services to the Debtor under Sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code. To the extent allowed by the Bankruptcy Court, reasonable compensation for fees and expenses incurred for services provided to the Debtor in accordance with Section 330(a) of the Bankruptcy Code by any Professional are entitled to payment as a Chapter 11 Administrative Claim.

1.44 “Professional Fee Claim” shall mean an Administrative Claim of a Professional for compensation and/or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date, pursuant to Sections 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code, as applicable.

1.45 “Pro Rata” shall mean the ratio of an Allowed Claim in a particular Class to the aggregate amount of all Allowed Claims in that Class.

1.46 “Recovery Claims” shall mean shall mean any and all actual or potential claims or causes of action against any Person or Entity for the avoidance, recovery, subordination, and other similar actions preserved for the Estate under the Bankruptcy Code, including but not limited to those set forth in Sections 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, regardless of whether or not such action has been commenced prior to the Effective Date.

1.47 “Reorganized Debtor” shall mean the Debtor after the Effective Date, as reorganized under this Plan.

1.48 “Reorganized Debtor Estate” shall mean all property of, vested in, controlled by, belonging to or in the possession of the Reorganized Debtor including, without limitation, the Assets assigned, transferred and conveyed to the Reorganized Debtor on the Effective Date pursuant to paragraph 6.2 of the Plan.

1.49 “Saratoga Assets” shall collectively mean the assets of the Debtor which are to be purchased under the Asset Purchase Agreement attached hereto as Exhibit A.

1.50 “Saratoga Assets Net Sale Proceeds” shall mean the funds generated from the sale of the Saratoga Assets, after payment of all applicable taxes and ordinary and reasonable costs of sale.

1.51 “Secured Claim” shall mean a Claim secured by a valid lien, security interest, or other charge against or interest in property in which the Debtor or the Estate has an interest, or which is subject to setoff, which is not avoidable under any state or federal laws including any provision of the Bankruptcy Code, to the extent of the value (determined in accordance with Section 506(a) or Section 502(c) of the Bankruptcy Code and Fed. R. Bankr. P. 3012) of the

interest of the holder of such Claim in the Debtor's or the Estate's interest in such property or to the extent of

1.52 "Unimpaired" shall mean a Claim or Interest whereby the legal, equitable and/or contractual rights of the Holder of such Claim or Interest are not altered under the Plan.

1.53 "Unsecured Claim" shall mean a Claim against the Debtor which is unsecured, and which is neither an Administrative Claim or Priority Tax Claim.

ARTICLE II CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

2.1 Unclassified Claims. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Article III of the Plan.

2.2 Classified Claims. A Claim is placed in a particular Class only to the extent the Claim falls within the description of that Class. A Claim may be and is classified in other Classes to the extent any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular class only to the extent such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

- a. Class 1 – Priority Non-Tax Claims.
- b. Class 2 – Secured Claim of Big Shoulders.
- c. Class 3 – General Unsecured Claims (not otherwise classified pursuant to the Plan).
- d. Class 5 – Equity Interests in the Debtor.

ARTICLE III TREATMENT OF UNCLASSIFIED CLAIMS

3.1 Administrative Claims. Except as otherwise provided for herein, and subject to the requirements of paragraph 7.1 of this Plan, on, or as soon as reasonably practicable after, the latest of: (i) the Initial Distribution Date; (ii) the date such Administrative Claim becomes an Allowed Administrative Claim; or (iii) the date such Administrative Claim becomes payable pursuant to any agreement between the Plan Administrator and the Holder of such Administrative Claim, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim: (y) cash from the Reorganized Debtor equal to the unpaid portion of such Allowed Administrative Claim; or (z) such other treatment as to which the Plan Administrator, and such Holder shall have agreed upon in writing.

3.2 Fees Due the United States Trustee. To the extent that any fees are due to the United States Trustee pursuant to 28 U.S.C. § 1930 on the Effective Date, such fees shall be paid

to the United States Trustee in full in cash on the Effective Date of the Plan. Any fees which become due to the United States Trustee following the Effective Date shall be paid when such fees are due and payable. In addition, the Plan Administrator shall comply with the obligation to file post-confirmation reports with the United States Trustee following the Effective Date of this Plan.

3.3 Priority Tax Claims. On, or as soon as reasonably practicable after, the latest of (i) the Initial Distribution Date; (ii) the date such claim becomes an Allowed Priority Tax Claim, or (iii) the date such Allowed Priority Tax Claim becomes payable pursuant to any agreement between the Plan Administrator and the Holder of such Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax claim shall receive on account of such Allowed Priority Tax Claim, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Tax Claim, (x) cash from the Reorganized Debtor Estate equal to the unpaid portion of such Allowed Tax Claim or (y) such other treatment agreed to by the Allowed Priority Tax Claim Holder and the Plan Administrator. The Priority Tax Claims are as follows:

- a. Priority Tax Claims of the IRS
- b. Priority Tax Claims of the New York Department of Revenue
- c. Priority Tax Claims of Essex County
- d. Priority Tax Claims of the Town of Corinth

ARTICLE IV TREATMENT OF CLASSIFIED CLAIMS

4.1 Class 1 – Priority Non-Tax Claims. Each Allowed Claim constituting a Class 1 Priority Non-Tax Claim shall be paid in full, in cash on the Effective Date. Class 1 is unimpaired.

4.2 Class 2 – Secured Claims of Big Shoulders. Class 2 consists of the Secured Claim held by Big Shoulders. Upon the Effective Date, the Class 2 Secured Claim shall be Allowed in the amount of \$300,000.00.

4.3 Class 3 – General Unsecured Claims. Each Holder of a General Unsecured Claim shall be treated as a Class 3 Claim and shall receive its Pro Rata share of all cash available for distribution by the Plan Administrator up to the full amount of each Allowed Class 3 Claim after satisfaction in full of the Liquidation Expenses, all Allowed Administrative Expenses, all Allowed Priority Tax Claims, and all Allowed Class 1, and 2 Claims. Distributions on Allowed General Unsecured Claims falling within Class 3 shall be made at such time and in such amounts as the Plan Administrator shall determine in his sole discretion. Class 3 is impaired.

4.4 Class 4 – Equity Interests in the Debtor. The Holders of Class 4 Equity Interests shall be entitled to receive all funds remaining after satisfaction in full of the Liquidation Expenses, all Allowed Administrative Expenses, all Allowed Priority Tax Claims, all Allowed Priority Non-Tax Claims, and all Allowed Class 1, 2, and 3 Claims. The Plan Administrator

shall turn over to the Debtor all assets remaining after such payments have been paid in full if any assets remain. Class 4 is impaired.

ARTICLE V ACCEPTANCE OR REJECTION OF THE PLAN

5.1 Impaired Classes of Claims Entitled to Vote. Claim Holders in Class 3 are entitled to vote to accept or reject the Plan. This Plan treats the Class 4 Claimants as Impaired and are deemed to reject the Plan and are not entitled to vote.

5.2 Acceptance by an Impaired Class. In accordance with Section 1126(c) of the Bankruptcy Code and except as provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

5.3 Summary of Classes Voting on the Plan. Only the votes of Holders of Claims in Class 4 that have not been Disallowed will be solicited with respect to this Plan. This Plan treats the Class 4 Claimants as impaired and to deems the Class 4 Claimants to have rejected the Plan rather than solicit those creditors for a vote.

ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN; THE SALES PROCESS

6.1 The Plan Administrator for the Reorganized Debtor shall employ the following sale procedures (the “Bidding Procedures”) for use in connection with the sale of the Saratoga Assets. In accordance with the Plan and these Bidding Procedures and upon conclusion of the Auction, the Plan Administrator shall obtain approval of the Sale to the Successful Bidder.

a. The Stalking Horse Bid and Bidder.

The Debtor and Revolution Rail Holding Company, LLC (the “Stalking Horse Bidder”) have agreed to the terms of a sale as set forth in the Asset Purchase Agreement (the “APA” or “Stalking Horse Bid” that is attached to the Plan as Exhibit A, whereby the Stalking Horse Bidder has proposed to purchase the Saratoga Assets for a total consideration of \$700,000.00 (the “Purchase Price”). Through the Plan, the Reorganized Debtor seeks approval of the sale of the Saratoga Assets to the Stalking Horse Bidder or to a competing bidder that submits a higher and better offer in accordance with the Bidding Procedures set forth below (the “Successful Bidder”).

The Saratoga Assets will be sold free and clear of all liens, claims, rights, interests, and encumbrances whatsoever, with all then-existing Encumbrances to attach to the net sale proceeds of the Assets with the same validity, enforceability, and priority, if any, as existed with respect to the Assets as of the Petition Date. The material terms of the proposed sale to the Stalking Horse Bidder or other Successful Bidder are as follows:

Stalking Horse Bidder	The Stalking Horse Bidder is Revolution Rail Holding
------------------------------	--

	Company, LLC.
Purchase Price	The Purchase Price is \$700,000.00 of cash plus the assumption of the Assumed Liabilities by the Stalking Horse Bidder at the Closing.
Purchased Assets	Substantially all of the Debtor's assets, excluding the Excluded Assets.
Excluded Assets	Cash, causes of action, pre-closing insurance claims, plus other assets identified in schedules to the APA.
Assumed Liabilities	Among other liabilities, all liabilities with respect to the Purchased Assets arising after the Closing.
Excluded Liabilities	All liabilities and obligations for which the Stalking Horse Bidder does not expressly assume any liability.
Contracts to be Assumed and Assigned	The Debtor will assume and assign to the Stalking Horse Bidder all contracts listed in the final APA, which consist primarily of its lease with an affiliate of the Stalking Horse Bidder and the Car Mark Agreement. The Debtor does not anticipate any "cure" amounts associated with the assumed leases and contracts.
Closing	The Closing Date shall occur not later than 150 days following date of the APA.
Deposit	\$25,000.00
Break-up Fee	\$35,000.00 plus reimbursement of reasonable fees and expenses.
Representations and Warranties	Except as specifically set forth in the APA, the Stalking Horse Bidder will accept the Assets at Closing on an "As Is" and "Where Is" basis.
Termination	The sale to the Stalking Horse Bidder may be terminated in various circumstances, the most significant of which include the following: the Sale Order is not entered within forty-two (42) days of the Auction.
Agreements with Management	None.

b. The Bidding Process.

The Plan Administrator shall, after employing such professionals, agents and employees as the Plan Administrator deems useful, exercise his/her discretion to: (i) prepare and distribute marketing materials seeking and soliciting offers for the Saratoga Assets as the Plan Administrator deems appropriate; (ii) determine whether any person, is a Qualified Bidder (as defined herein); (iii) coordinate the efforts of the Qualified Bidders in conducting their respective due diligence investigations with respect to the Properties; (iv) receive bids from Qualified Bidders for one or all of the Properties; and (v) negotiate any offer made to acquire one or all of the Properties (collectively, the “Bidding Process”). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Plan Administrator nor its representatives shall be obligated to furnish any information relating to any of the Properties to any person who is not a Qualified Bidder. The Plan Administrator shall have the right to amend the rules set forth herein for the Bidding Process or adopt such other written rules for the Bidding Process, which, in the Plan Administrator’s reasonable judgment will better promote the goals of the Bidding Process and which are not inconsistent with the terms of the Plan.

c. Sale Participation Requirements.

Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Plan Administrator, in order to participate in the Bidding Process, each person (the “Potential Bidder(s)”) must deliver (unless previously delivered) to the Plan Administrator or his counsel, the following items:

- (a) a confidentiality agreement signed by the Potential Bidder in a form acceptable to the Plan Administrator; and
- (b) current financial statements of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Properties, current financials of statements the equity holders of the Potential Bidder who shall guarantee the obligations of the Potential Bidder, or such other form of financial disclosure and credit-quality support or enhancement as may be acceptable to the Plan Administrator in its sole discretion, in each case that demonstrates that the Potential Bidder has the financial wherewithal to submit a Qualified Bid.

An “Acceptable Bidder” is a Potential Bidder who delivers the items described in subparagraphs (a), and (b) on a timely basis, whose financial information and credit-quality are deemed acceptable by the Plan Administrator. The Plan Administrator’s Representatives will notify each Potential Bidder whether such Potential Bidder has submitted adequate documentation so that such Potential Bidder may submit a Bid (each, an “Acceptable Bidder”). The Stalking Horse Bidder shall be deemed an Acceptable Bidder and a Qualified Bidder at all times.

d. Due Diligence.

Only Acceptable Bidders shall be eligible to receive due diligence information and access to electronic data and to additional non-public information regarding the Debtors’ interests in the

Saratoga Assets. ***No Acceptable Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.*** The Plan Administrator will provide to each Acceptable Bidder reasonable due diligence information, as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, and as available. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtor and subsequently the Plan Administrator shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtor and subsequently Plan Administrator shall not furnish any confidential information relating to Saratoga, or the Sale to any person except to an Acceptable Bidder or to such Acceptable Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement.

The Plan Administrator and his advisors shall coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; provided that the Plan Administrator may decline to provide such information to Acceptable Bidders who, at such time and in the Plan Administrator's reasonable business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate the Sale.

All due diligence requests must be directed to the Plan Administrator's Representatives. Notwithstanding anything to the contrary in these Bid Procedures, all substantive direct communications with Acceptable Bidders shall be through the Plan Administrator's Representatives.

If an Acceptable Bidder makes a Bid that would make relevant the Plan Administrator's need for information from the Bidder concerning the Bidder, the Acceptable Bidder shall comply with all reasonable requests for information from the Plan Administrator and the Plan Administrator's Representatives regarding the Acceptable Bidder (the "Bidder Due Diligence Information," and together with any Bid information shared during the bidding process, the "Bidder Confidential Information"). The Acceptable Bidder may request that the Plan Administrator enter into a Confidentiality Agreement, with respect to the Bidder Confidential Information satisfactory to the Plan Administrator and the Acceptable Bidder, with such notice in the Case as deemed appropriate by the Plan Administrator. Failure by an Acceptable Bidder to comply with reasonable requests for information may be a basis for the Plan Administrator and the Plan Administrator's Representatives to determine that such bidder no longer qualifies as an Acceptable Bidder.

e. Bid Requirements.

Any proposal, solicitation, or offer (each, a "Bid") shall be in cash, must be submitted by an Acceptable Bidder, and must be submitted on or before the Bid Deadline, in writing and determined by the Plan Administrator, in his reasonable business judgment, to have satisfied the following requirements (collectively, the "Bid Requirements").

1. Consideration and Structure.

(a) Total Consideration. The Bid must identify the form and amount of the total consideration to be provided to the Debtor in cash (the “Bid Value”).

(b) Minimum Bid. The aggregate cash consideration proposed by each completing Bid must equal or exceed the sum of (i) the Purchase Price set forth in the Stalking Horse Bid; (ii) the Break-Up Fee; plus (iii) \$15,000.00 (the “Overbid Increment”) (collectively, the “Minimum Bid”).

(c) Deposit. Each competing Bid must be accompanied by a cash deposit in the amount of \$35,000.00, to be held by the Plan Administrator or a third-party escrow company as agreed by the Plan Administrator in his sole discretion (the “Deposit”).

(d) Same or Better Terms. Except as otherwise provided herein, each and every competing Bid must be, in the Plan Administrator’s business judgment, on terms the same as or better than the terms of the Asset Purchase Agreement. Each Bid must include duly executed, noncontingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include a copy of the Asset Purchase Agreement clearly marked to show all non-substantive changes requested by the Bidder as well as those changes related to Purchase Price.

(e) Sources of Financing. Each and every competing Bid must indicate the source of cash consideration, including proposed funding commitments and confirm that such consideration is not subject to any contingencies.

(f) Public Interest. Each and every competing Bid must indicate that the potential purchaser shall protect the public interest as set forth in 11 U.S.C. § 1165 by preserving the operation of rail service on the rail lines.

2. Other Requirements.

(a) Binding and Irrevocable. The Bid must by its terms remain binding and irrevocable until thirty (30) days after the date of selection of the Successful Bid, subject to extension by the parties or the Court in the event that any necessary or advisable regulatory approval has not been received as of such date; *provided that* if the Bid is not selected as the Successful Bid or Backup Bid, the Bid may be revoked after approval of the Successful Bid by the Bankruptcy Court.

(b) Conditions to Closing. The Bid must identify with particularity each and every condition to Closing.

(c) No Financing, Approval, or Diligence Outs. The Bid must not be conditioned on obtaining any of the following: (a) financing; (b) board of directors or other similar approval; (c) regulatory approval; or (d) the outcome or

completion of a due diligence review by the Acceptable Bidder, other than as set forth in the Stalking Horse Agreement.

(d) Due Diligence Acknowledgement. The Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Sale before making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Sale in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Sale or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Acceptable Bidder's proposed form of definitive agreement.

(e) No Collusion. The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale.

(f) Good Faith Offer. The Bid must constitute a good faith, bona fide offer to consummate the Sale.

(g) Identification Information. The Acceptable Bidder must fully disclose the identity of each entity or person that will be consummating the Sale or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with any and all connections of such entities and persons to the Debtors, and sufficient evidence that the Acceptable Bidder and each such entity is legally empowered, by power of attorney or otherwise, to complete the Sale on the terms contemplated by the parties.

(h) Consent to Jurisdiction. The Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to Debtor's qualification of Bids, the Auction, the construction and enforcement of these Bid Procedures, and the Sale documents and the Closing, as applicable.

(i) Disclaimer of Bid Protections. Each Bid (other than the Stalking Horse Bid) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation ("Bid Protections"). For the avoidance of doubt, no Qualified Bidder (as defined herein) (other than the Stalking Horse Bidder) will be permitted to request, or be granted by the Plan Administrator, at any time, whether as part of the Auction or otherwise, any Bid Protections of any kind, and by submitting its Bid is agreeing to refrain from and waive any assertion or

request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code.

3. Credit Bid.

Nothing in these Bid Procedures is intended to, or shall, impair or limit the credit bid rights of any parties determined by the Court to qualify under Section 363(k) of the Bankruptcy Code. All credit bids are subject to satisfying higher priority lien claims in full.

f. Open Bid Requirements.

The Plan Administrator will only consider Bids during the Open Bidding Process from Acceptable Bidders that satisfy the Bid Requirements. Acceptable Bidders will be permitted to submit multiple Bids during the Open Bidding Process. In addition, Acceptable Bidders during the Open Bidding Process must satisfy the following requirements (the “Open Bid Requirements”):

1. Minimum Value. The Bid must provide for Bid Value equal to at least the Minimum Bid (the “Initial Minimum Overbid”).
2. Documentation. The Bid must include a marked version of the Asset Purchase Agreement.
3. No Other Bid Protections. A Bid may not propose any Bid Protections.

Bids submitted during the Open Bidding Process and fulfilling all of the Bid Requirements and Open Bid Requirements may, at the Plan Administrator’s discretion, be deemed to be “Qualified Bids,” and those parties submitting Qualified Bids may, at the Plan Administrator’s discretion, be deemed to be “Qualified Bidders.” To be eligible to be selected as a Qualified Bidder, a Bidder must be an Acceptable Bidder and must submit a Bid that is actually received (including the Deposit) no later than 11:59 p.m. (prevailing Mountain Time) on _____ (the “Bid Deadline”) by each of the Plan Administrator’s Representatives. Acceptable Bidders that do not submit a Bid by the Bid Deadline will not be eligible to be selected as Qualified Bidders without further order of the Court. Electronic submission of Qualified Bids to the Plan Administrator’s Representatives are acceptable, provided that they are actually received by the Bid Deadline.

By no later than two (2) business days after the Bid Deadline, the Plan Administrator shall determine which Acceptable Bidders are Qualified Bidders, and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Plan Administrator. The Stalking Horse Bid shall constitute a Qualified Bid.

g. Auction.

If the Plan Administrator receives a Qualified Bid, other than the Stalking Horse Bid, the Plan Administrator will conduct the Auction to determine the Successful Bidder with respect to the Assets. If the Plan Administrator does not receive a Qualified Bid (other than the Stalking

Horse Bid), the Plan Administrator will not conduct the Auction and shall designate the Stalking Horse Bidder's Qualified Bid as the Successful Bid.

No later than two (2) calendar days after the Bid Deadline at 12:00 p.m. (prevailing Mountain Time), the Plan Administrator will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Plan Administrator's reasonable business judgment (the "Baseline Bid"), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Plan Administrator reasonably deems relevant to the value of the Qualified Bid to the Debtors' estate, including, among other things: (a) the total consideration; (b) the public interest under 11 U.S.C. § 1165; and (c) the likelihood of the Bidder's ability to close a transaction, the conditions thereto, and the timing thereof.

The Auction shall take place at 10:00 a.m. (prevailing Mountain Time) on _____, at the offices of Markus Williams Young & Hunsicker, LLC, 1775 Sherman St, Suite 1950, Denver, Colorado 80203, and may be convened remotely via telephone or video conference as deemed appropriate by the Plan Administrator, and may be rescheduled to such later date and time as selected by the Plan Administrator, with advance notice to all Qualified Bidders. The Auction shall be conducted in a timely fashion according to the following procedures.

1. The Plan Administrator and Plan Administrator's Representatives Shall Conduct the Auction.

The Plan Administrator and the Plan Administrator's Representatives shall direct and preside over the Auction. At the start of the Auction, the Plan Administrator shall describe the terms of the Baseline Bid. All incremental Bids made thereafter must be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Plan Administrator shall maintain a written or recorded transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person (or via telephone if desired or video conference if applicable) and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction.

2. Terms of Overbids.

"Overbid" means any cash bid made at the Auction by a Qualified Bidder subsequent to the Plan Administrator's announcement of the Baseline Bid. Each Overbid must comply with the following conditions.

(a) Minimum Overbid Increment. Any Overbid following the Initial Minimum Overbid or following any subsequent Prevailing Highest Bid (as defined

below) shall be in increments in cash of at least the amount of \$50,000.00 (the “Overbid Increment”).

(b) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Plan Administrator may announce a deadline (as the Plan Administrator may, in his business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Plan Administrator.

(c) Overbid Alterations. Each Overbid must contain the Overbid Increment and may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estate than any prior Qualified Bid or Overbid, as determined in the Plan Administrator’s reasonable business judgment, but shall otherwise comply with the terms of these Bid Procedures.

(d) Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Plan Administrator shall announce whether there is an Overbid that is higher or otherwise better than the Initial Minimum Overbid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Plan Administrator as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Plan Administrator shall describe to all Qualified Bidders the material terms of any new Overbid as the Prevailing Highest Bid as well as the value attributable by the Plan Administrator to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

(e) Stalking Horse Credit Bid. In making an Overbid during any round at the Auction, the Stalking Horse shall be given a credit of \$35,000.00 (representing the Breakup Fee (the “Stalking Horse Credit Bid”). In no event shall the Stalking Horse be required to fund the Stalking Horse Credit Bid with cash.

3. Consideration of Overbids.

The Plan Administrator reserves the right, in its reasonable business judgment to adjourn the Auction one or more times to, among other things (i) facilitate discussions between the Plan Administrator and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Plan Administrator with such additional evidence as the Plan Administrator, in his reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

4. Closing the Auction.

1. The Auction shall continue until there is only one Qualified Bid that the Plan Administrator determines, in his reasonable business judgment to be the highest or otherwise best Qualified Bid for the Property. When determining the highest or otherwise best Qualified Bid, as compared to

other Qualified Bids, the Plan Administrator may consider the following factors in addition to any other factors that the Plan Administrator deems appropriate: (i) the amount and nature of the total consideration; and (ii) the likelihood of the Bidder's ability to close a transaction, the timing thereof, (iii) such Bidder's connections with the Debtor, (iv) the Bidder's ability to continue and maintain operations of the Debtor, and (v) the public interest as defined in 11 U.S.C. § 1165.

2. Such Qualified Bid shall be declared the "Successful Bid," and such Qualified Bidder, the "Successful Bidder" and at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Plan Administrator of the Successful Bid is conditioned upon approval by the Court of the Successful Bid.
3. For the avoidance of doubt, nothing in these Bid Procedures shall prevent the Plan Administrator from exercising his fiduciary duties under applicable law.
4. The Plan Administrator shall not consider any Bids or Overbids submitted after the conclusion of the Auction without further order of the Court, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid absent further Court order.
5. As soon as reasonably practicable after closing the Auction, the Plan Administrator shall cause the Bid Documents for the Successful Bid and Backup Bid (defined below) to be filed with the Court.

5. No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the Sale or bidding (including that it has no agreement with any other Bidder or Qualified Bidder to control the price), and (ii) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

h. Backup Bidder.

1. Notwithstanding anything in these Bid Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets, as determined by the Plan Administrator in the exercise of his reasonable business judgment (the “Backup Bid”), shall be required to serve as a backup bidder (the “Bound Backup Bidder”), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Plan Administrator.

2. The identity of the Bound Backup Bidder and the amount and material terms of the Qualified Bid of the Bound Backup Bidder shall be announced by the Plan Administrator, at the conclusion of the Auction at the same time the Plan Administrator announces the identity of the Successful Bidder. The Bound Backup Bidder shall be required to keep its Qualified Bid (or if the Bound Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the Successful Bidder. The Bound Backup Bidder’s Deposit shall be held by the Plan Administrator until the closing of the transaction with the Successful Bidder.

3. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Plan Administrator may select the Bound Backup Bidder as the Successful Bidder, and such Bound Backup Bidder shall be deemed a Successful Bidder for all purposes. The Plan Administrator will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Bound Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Plan Administrator, and the Plan Administrator specifically reserves the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

i. “As Is; Where Is.”

The sale of the Saratoga Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Plan Administrator, its agents or the Estate, except as provided in the Plan. All of the Debtor’s right, title and interest in and to the Saratoga Properties shall be sold free and clear of all interests, Liens, Claims and encumbrances, with all Liens, Claims and encumbrances attached to the Saratoga Net Sale Proceeds and which such proceeds to be used and distributed in accordance with the Plan.

7.1 The Sale Hearing.

At the Sale Hearing, the Plan Administrator will request entry of an order, among other things, authorizing and approving the sale of the Saratoga Assets to the Successful Bidder free and clear of all Liens, Claims and encumbrances, with all Liens, Claims and encumbrances to attach to the Saratoga Net Sale Proceeds and to be distributed in accordance with the Plan. The Sale Hearing may be adjourned from time-to-time without notice other than by announcement in open court.

ARTICLE VII

ADDITIONAL MEANS FOR IMPLEMENTATION OF THE PLAN

7.1 Implementation of the Plan. The Plan Administrator will implement and consummate the Plan through the means contemplated by Sections 1123(a)(5)(B) and (D), 1123(b)(3)(A) and (B), and 1123(b)(4) of the Bankruptcy Code.

7.2 Vesting of Property in Reorganized Debtor and Preservation of Causes of Action. Except as specifically provided in this Plan, on the Effective Date, and in accordance with this Plan and Section 1141(c) of the Bankruptcy Code, all of the Assets and any proceeds thereof shall vest in the Reorganized Debtor free and clear of all liens, Claims, Interests and any other rights, obligations, or interests of any Person in, to or upon the Estate Assets (except as otherwise provided in this Plan). On the Effective Date and in accordance with Section 1123(b)(3)(B) of the Bankruptcy Code, the Reorganized Debtor shall be vested with, retain and may (but is not required to) enforce all Causes of Action. In regard to Causes of Action pending on the Effective Date, the Reorganized Debtor shall be deemed to be substituted as the real party in interest in the name and place of the Debtor named in such Causes of Action.

7.3 Liquidation of Assets. On the Effective Date, the Plan Administrator shall be deemed automatically appointed as sole officer and director of the Reorganized Debtor with the sole and exclusive authority to act on behalf of the Reorganized Debtor. After the Effective Date, the Reorganized Debtor, acting through the Plan Administrator, shall liquidate all remaining Assets, including the Causes of Action, and the Plan Administrator, shall have the exclusive right to cause the Reorganized Debtor to sue on, settle, or compromise any and all Causes of Action, subject to approval by the Bankruptcy Court.

7.4 Management and Power of Reorganized Debtor. After the Effective Date, the affairs of the Reorganized Debtor and all assets held or controlled by the Reorganized Debtor, which shall be exclusively managed, operated and controlled by the Plan Administrator as sole officer and director of the Reorganized Debtor and the President, Treasurer, Vice-President, Secretary and any other officer of the Reorganized Debtor with delegated authority to act on its behalf in accordance with the terms of this Plan. The Plan Administrator may not be removed unless upon motion of a creditor holding an Allowed Claim and after notice and a hearing, the Court finds that Plan Administrator has engaged in fraud, willful misconduct, gross mismanagement of the affairs of the Reorganized Debtor or has materially failed to perform the duties and obligations within the time periods set out in the Plan. The Reorganized Debtor shall be the representative of the Debtor's Estate pursuant to Section 1123 of the Bankruptcy Code and shall have all of the rights, powers and standing of a debtor in possession under Section 1107 of the Bankruptcy Code, and such other rights, powers and duties incident to causing performance of the Debtor's obligations under the Plan as may be necessary. The powers of the Reorganized Debtor, acting through the Plan Administrator, as the sole officer and director of the Reorganized Debtor with delegated authority to act on its behalf, shall include, but not be limited to:

- a. To receive and hold all the Assets of the Reorganized Debtor and to have exclusive possession and control thereof as permissible under applicable law;

- b. To effectuate the sale of the Saratoga Assets pursuant to the terms of the Plan free and clear of all Liens, Claims and encumbrances with all Liens, Claims and encumbrances to attach to the Saratoga Net Sale Proceeds which shall be distributed in accordance with the Plan.
- c. To operate, manage, sell and convert all or any portion of the Assets in the Reorganized Debtor (pursuant to Section 1123(a)(5)(D) or any other provision of the Bankruptcy Code) to cash and distribute the net distributable proceeds as specified in the Plan;
- d. To enter into, perform and exercise rights under contracts binding upon the Reorganized Debtor which are reasonably incident to the administration of the Reorganized Debtor and which the Plan Administrator, in the exercise of his best business judgment, reasonably believes to be in the best interests of the Reorganized Debtor;
- e. To establish and maintain accounts, consistent with the requirements of Section 345 of the Bankruptcy Code, at banks and other financial institutions, in a clearly specified fiduciary capacity, into which the cash and other property of the Reorganized Debtor may be deposited, and draw checks or make withdrawals from such accounts, and to pay or distribute such amounts of the Reorganized Debtor as permitted or required under this Plan provided however that the investment powers of the Plan Administrator, are limited to the power to invest in demand and time deposits, such as short-term certificates of deposit, in banks and other savings institutions, or other temporary, liquid investments, such as United States Treasury Bills and other investment vehicles authorized by Section 345 of the Bankruptcy Code;
- f. To employ attorneys, accountants, marketing agents, real estate brokers, auctioneers, marketing agents, expert witnesses, or other professionals to advise or assist him in the discharge of his duties as Plan Administrator;
- g. To hold, operate, liquidate and distribute the Assets and their proceeds in the Reorganized Debtor as specified in this Plan, the Confirmation Order and the Reorganized Debtor Agreement;
- h. Pursuant to Section 1123(a)(5)(D) of the Bankruptcy Code, to sell or otherwise dispose of, and liquidate or convert to cash, Assets of the Reorganized Debtor Estate, either subject to or free of any lien, or distribute all or any part of the property of the Reorganized Debtor Estate among those having an interest in such property of the Reorganized Debtor Estate;
- i. To collect and receive any accounts receivable, income, proceeds of sale, and distributions derived from or relating to the Reorganized Debtor and to distribute the same to the Holders of Allowed Claims in accordance with the terms of the Reorganized Debtor Agreement and this Plan;

- j. To pay any and all necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Reorganized Debtor including, without limitation, paying the fees owing to the Plan Administrator;
- k. To investigate, prosecute, file, settle, compromise, withdraw, or litigate to judgment in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) any pending objections to Claims filed against the Debtor, the Estate, or the Reorganized Debtor. After the Confirmation Date, only the Plan Administrator shall have the authority to file objections to Claims filed against the Debtor, and to settle, compromise, withdraw, or litigate to judgment those objections to Claims.
- l. To investigate, file, compromise, settle, withdraw or litigate in the Bankruptcy Court or court of competent jurisdiction, any and all Claims (including but not limited to Administrative Claims), Causes of Action, or other rights belonging to the Reorganized Debtor. Nothing in this Plan or the Confirmation Order shall preclude or estop the Plan Administrator from bringing a subsequent action in any court or adjudicative body of competent jurisdiction, to enforce any or all of its rights in connection with the Causes of Action, irrespective of the Person, of any interest, cause of action, or nexus of fact, issues or events which is now or which could have been asserted in this Chapter 11 Case, the present litigation, and those which may be asserted in any subsequent litigation brought by any Person. Moreover, the failure to commence any of the Causes of Action prior to the Confirmation Date shall not constitute res judicata, judicial or collateral estoppel with respect to any Cause of Action;
- m. To sue or be sued in connection with any matter arising from or related to the Reorganized Debtor Agreement or this Plan that affects in any way the rights or obligations of the Reorganized Debtor;
- n. To represent the interests of the Reorganized Debtor with respect to any matters relating to the Reorganized Debtor Agreement or this Plan;
- o. To act as representative of the Estate and to investigate, initiate, prosecute, settle or compromise any and all Causes of Action, Claims, rights or other causes of action belonging to the Estate and to distribute any proceeds related thereto in accordance with the terms of this Plan;
- p. To hold all delegated authority to vote any and all rights of the Debtor in connection with any subsidiary or affiliate owned by the Debtor;
- q. To dissolve the Debtor and/or any of its wholly owned subsidiaries or affiliates under applicable law at the appropriate time in the discretion of the Plan Administrator, and execute any documents on behalf of the Debtor to effectuate the dissolution of the Debtor;

- r. If the Reorganized Debtor shall become subject to federal income tax or state tax, the Plan Administrator shall have the power, exercisable at his discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Reorganized Debtor resulting from any distribution made by the Reorganized Debtor in accordance with the Plan, provided however, the Plan Administrator shall not be responsible for payment of any taxes otherwise due and owing by the shareholders of the Debtor or the Reorganized Debtor;
- s. In general, without in any manner limiting any of the foregoing, or the following, deal with property comprising the Reorganized Debtor Estate or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, provided, however, that the investment powers of the Plan Administrator, other than those reasonably necessary to maintain the value of the Reorganized Debtor Estate Assets of the Reorganized Debtor are limited to the power to invest in demand and time deposits, such as short-term certificates of deposit, in banks and other savings institutions, or other temporary, liquid investments, such as United States Treasury Bills; and
- t. After the Plan is substantially consummated, to file a Motion with the Bankruptcy Court to enter the Final Decree pursuant to Section 350 of the Bankruptcy Code, Rule 3022 of the Federal Rules of Bankruptcy Procedure, and L.B.R. 3022-1.

7.5 Reorganized Debtor Governance. After the Confirmation Date the Debtor's Articles, Operating Agreements, and Bylaws shall be deemed amended and modified to incorporate the terms, conditions and parameters set forth in this Plan with respect to the appointment of Plan Administrator as the as sole director of the Reorganized Debtor and as the President, Treasurer, Vice-President, Secretary and any other officer of the Reorganized Debtor with delegated authority to act on its behalf in accordance with the terms of this Plan. The delegated powers and authority of the Plan Administrator to act on behalf of the Reorganized Debtor include, without limitation those matters set out in paragraph 7.5 above and:

- a. The Plan Administrator may take immediate possession of the Assets, cash and Causes of Action and all things of value relating thereto, regardless of where such property is located, including, but not limited to, operating accounts, bank accounts, records, files, reports, agreements, checks, drafts, documents, accounts receivable, and other things and articles of any and all types and kinds.
- b. The Plan Administrator shall take charge of and preserve, manage, operate, and protect the Estate's interests, and is hereby given the powers and authority necessary to accomplish the purposes of this Plan, including, but not limited to, the following powers, all of which may be exercised without further order of any Court.

- c. to take possession of and assume control of all records, files, reports, agreements, checks, drafts, documents, accounts receivable, and other things and articles of any and all types and kinds;
- d. to take possession of all operating accounts and bank accounts of the Debtor, and to open, transfer and change all accounts, so that all such accounts are in the name of the Plan Administrator; and to make withdrawals from and issue checks upon such accounts to fund the operations of the Reorganized Debtor;
- e. to obtain and renew all insurance policies that the Plan Administrator deems necessary for the protection of the Estate and for the protection of the interests of the Plan Administrator and the Reorganized Debtor;
- f. to enter into contracts for those professional services necessary to aid the Plan Administrator in the administration, management and disposition of the Causes of Action, including the retention of attorneys, accountants, and other professionals, with all expenses incurred in connection therewith deemed to be expenses of the Reorganized Debtor;
- g. to institute such legal actions as the Plan Administrator deems necessary to enforce all rights of action and claims for recovery arising out of or related to the Causes of Action, including without limitation seeking substitution as the real party in interest in pending Causes of Action; to settle Causes of Action, subject to Court approval; and to investigate and, if the Plan Administrator deems appropriate, pursue Causes of Action in his discretion;
- h. to exercise any and all rights of the Debtor, including but not limited to voting rights, in connection with any subsidiary or affiliate of the Debtor;
- i. to dissolve the Debtor under applicable law at the appropriate time in his discretion, and execute any documents on behalf of the Debtor to effectuate the dissolution of the Debtor and/or any subsidiary or Entity under the control of the Debtor;
- j. on a monthly basis, the Plan Administrator will submit to parties in interest a monthly report detailing Liquidation Expenses incurred by the Plan Administrator. Parties-in-interest shall retain to right to file an objection to the Plan Administrator's expenses with the Bankruptcy Court. Any objection to the Plan Administrator's expenses must be filed within fourteen (14) days of the Plan Administrator's monthly report.
- k. Any debts, liabilities or obligations incurred by the Plan Administrator in the course of managing the Reorganized Debtor, whether in the name of the Plan Administrator, the Debtor, or the Reorganized Debtor, shall be the debt, liability, and obligation of the Reorganized Debtor only and not the Plan Administrator or any employee or agent personally.

7.6 Quarterly Report. As soon as practicable after each calendar quarter, and in no event later than thirty (30) days after the end of each quarter, the Plan Administrator shall file with the Bankruptcy Court, and submit to any Holder of an Allowed Claim who requests copies of such quarterly report, after the Confirmation Date an unaudited written report and account showing: (a) the assets and liabilities of the Reorganized Debtor; (b) any Distributions made and liquidation expenses paid pursuant to the Reorganized Debtor Agreement and this Plan; and (c) any material action taken by the Plan Administrator in the performance of his duties under the Reorganized Debtor Agreement and this Plan that have not been previously reported.

7.7 Disbursing Agent. The Plan Administrator or his nominee shall serve as the disbursing agent under this Plan and shall make all Distributions provided for under this Plan. Pursuant to the terms of this Plan, the Reorganized Debtor shall maintain a reserve in trust for the payment of any Liquidation Expenses of the Reorganized Debtor and any Disputed Claims.

7.8 Employment and Payment of Professionals. The Plan Administrator may, without need for further order of the Bankruptcy Court, employ such Persons, including Professionals (which include without limitation, attorneys, accountants, marketing agents, real estate brokers, auctioneers and marketing agents), as it may deem necessary to enable him to perform the functions hereunder, and the costs of such employment and other expenditures shall be paid from the Reorganized Debtor. Professionals employed by the Plan Administrator shall not be required to separately file applications with the Bankruptcy Court for allowance and payment of fees and costs incurred on behalf of the Plan Administrator. In his or her monthly reports to parties in interest, the Plan Administrator shall detail fees and expenses incurred by Professionals employed by the Plan Administrator. Parties-in-interest shall retain the right to file an objection to Professionals' fees and expenses with the Bankruptcy Court within fourteen (14) days of the Plan Administrator's monthly report. If no objection is filed by any party in interest, the Plan Administrator shall pay, without further notice, hearing, or approval of the Bankruptcy Court, from the Reorganized Debtor Estate such fees and expenses but only after the Plan Administrator has received detailed invoices at least ten (10) business days prior to payment from the Reorganized Debtor.

7.9 Successor Plan Administrator. In the event the Plan Administrator resigns or becomes unable to complete the obligations set forth herein, as soon as practicable thereafter, then counsel for the Plan Administrator shall file a notice with the Bankruptcy Court to select a successor disinterested Plan Administrator and file a notice of such selection with the Bankruptcy Court. At any time after the Effective Date, any Holder of an Allowed Claim may file a motion to remove the Plan Administrator for Cause as set forth in Paragraph 7.5 above. If the Bankruptcy Court orders the Plan Administrator removed or replaced, the successor Plan Administrator shall be selected as set forth above.

7.10 Distribution. Distribution of proceeds shall be made in accordance with the Confirmation Order and this Plan.

- a. Reserve for Disputed Claims. For purposes of calculating Pro Rata or any other distributions to be made under the Plan to Holders of Allowed Claims, the calculation of the total Allowed Claims in any Class shall be computed as if all Disputed Claims then pending were Allowed in the full amount thereof.

- b. Initial Distribution Date. On or as soon as practicable after the Effective Date, the Plan Administrator in his sole discretion shall distribute the property to be distributed under the Plan to the Holders of Claims that, as of the Effective Date, are Allowed Claims in the order of priority set forth in the Plan.
- c. Allowance of Disputed Claims. All Distributions shall be made with respect to any Disputed Claim which becomes an Allowed Claim after the Effective Date on or as soon as practicable after the date on which each such Disputed Claim becomes an Allowed Claim. The amount of such Distribution shall be calculated on a Pro Rata basis, so that the subject Claim receives an initial distribution equal to the total percentage distributions made prior to the date of such allowance on other Allowed Claims in its Class.
- d. Subsequent Distribution Dates. After the Initial Distribution Date, unless otherwise directed in a Final Order, the Reorganized Debtor shall make additional distributions periodically to the Holders of Allowed Claims as and when the Reorganized Debtor, in its sole and absolute discretion, deems appropriate. The Plan Administrator shall use his reasonable and best efforts under the circumstances to make such distribution as expeditiously as prudently possible.
- e. Delivery of Distributions. Distributions and deliveries to Holders of Allowed Claims shall be made at the address set forth on the proofs of claim or interest filed by such Holders (or at the last known address of such holders if no proof of claim or interest is filed or if Plan Administrator has been notified of a change of address).
- f. Unclaimed Distributions. Pursuant to Section 347(b) of the Bankruptcy Code and this Plan, all unclaimed distributions made under the Plan shall become property of the Reorganized Debtor sixty (60) days after the Plan Administrator's attempted distribution has been returned as undeliverable.
- g. Final Distribution. Upon resolution of all outstanding objections to Disputed Claims, and all actions or other proceedings relating to any Causes of Action or Claims belonging to the Reorganized Debtor including any appeals, the Plan Administrator shall cause the distribution of all remaining available assets of the Reorganized Debtor to the Holders of Allowed Claims, in the order of priority set forth in this Plan and the Reorganized Debtor Agreement. The Reorganized Debtor, acting through the Plan Administrator, shall then file a final report and account of all receipts and disbursements with the Bankruptcy Court and the Office of the United States Trustee. The Plan Administrator shall be discharged from his obligations under this Plan after the Reorganized Debtor has terminated pursuant to its terms. For ease of administration to the extent that the Plan Administrator continues to hold funds after the Final Distribution, to the extent such funds do not exceed \$2,500.00, the Plan Administrator may contribute such funds to any

recognized charitable organization and then terminate the Reorganized Debtor.

7.11 Means of Cash Payment. Cash payments made pursuant to this Plan shall be paid by checks drawn on an account maintained by the Reorganized Debtor. The Plan Administrator is not required to issue a check or make a payment on a Claim if the amount of such check or payment is less than \$25.00.

7.12 Effect of Appeals. Unless the Confirmation Order is stayed pending appeal, at the option of the Plan Administrator, this Plan may be consummated notwithstanding the pendency of an appeal from the Confirmation Order or the timely service of filing a motion under Bankruptcy Rules 7052, 8002, 8003, 8015, 9023 or 9024.

7.13 Exemption from Certain Taxes and Recording Fees. Pursuant to Section 1146(a) of the Bankruptcy Code, any transfer from the Debtor to the Reorganized Debtor or to any Entity in accordance with, in contemplation of, in connection with the Plan, or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (2) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

7.14 Discharge and Release of Claims. Pursuant to Section 1141(d)(3) of the Bankruptcy Code, the Debtor shall not receive a discharge.

7.15 Tax Matters. The Debtor is an Illinois limited liability company, thereby its corporation income, losses and credits which historically has passed its income, losses and credits to the parent of its parent, Permian Basin Railways, Inc. The Plan shall not alter or modify this tax status and income, losses and credits shall continue to pass to the Debtor's member and thereafter to the member's parent after the Effective Date.

7.16 Term of Injunctions or Stays. Unless otherwise provided in this Plan, all injunctions or stays arising under or entered during the Chapter 11 Case under Section 105 or Section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order provided for such injunction or stay. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

7.17 Vesting of Pending Actions. As of the Effective Date, all pending motions, objections and other pending pleadings of the Debtor shall be vested in the Plan Administrator, who shall have discretion whether to continue to proceed with such positions, amend them or withdraw them all in the Plan Administrator's discretion.

ARTICLE VIII CLAIMS RESOLUTION

8.1 Deadline for Filing Administrative Claims.

- a. Any Person or Entity asserting an Administrative Claim (other than a Professional Fee Claim) shall file with the Court, and serve on the Plan Administrator, a request for payment of such Administrative Claim within thirty (30) days after the Effective Date ("Administrative Claim Bar Date"). Such notice must include at a minimum (i) the name of the Holder of the Claim; (ii) the amount of the Claim; and (iii) the basis of the Claim. Failure to file timely and properly the notice required by this section shall result in the Claim being forever barred, and the Plan Administrator, the Debtor, the Estate and the Reorganized Debtor shall be discharged of any obligation on such Claim. Should the Plan Administrator object to any Administrative Claim that is not a Professional Fee Claim within twenty-one (21) days after such Claim is timely filed and served, such Claim shall be resolved by Final Order of the Bankruptcy Court.
- b. Any Person who holds, or asserts, an Administrative Claim that is a Professional Fee Claim for services rendered and expenses incurred prior to and including the Confirmation Date, shall be required to file with the Bankruptcy Court and serve, pursuant to Local Bankruptcy Rule 9013-1, on all Persons required to receive notice, a final fee application within thirty (30) days after the Effective Date ("Fee Claim Bar Date"). Failure to timely file a final fee application as required by this section shall result in the Professional Fee Claim being forever barred, and the Plan Administrator, the Debtor, the Estate and the Reorganized Debtor shall be discharged of any obligation on such Claim, to the extent such Professional Fee Claim exceeds amounts previously authorized for payment by the Bankruptcy Court. Should the Plan Administrator, the United States Trustee, any creditor, or any party-in-interest object to any Professional Fee Claim within twenty-one (21) days after such Professional Fee Claim is timely filed and served, such Professional Fee Claim shall be resolved by Final Order of the Bankruptcy Court. After Bankruptcy Court approval by Final Order, the Holder of a Professional Fee Claim shall receive cash in the amount awarded to such professionals and entities at such times and only in accordance with a Final Order entered pursuant to Sections 330, 331, 503(b)(2) through (6), or 1103 of the Bankruptcy Code, as applicable.

8.2 Objections to Claims that are not Administrative Claims.

- a. After the Confirmation Date, the Plan Administrator shall have the exclusive authority to investigate, prosecute, file, settle, compromise, withdraw, or litigate

to judgment in the Bankruptcy Court or on appeal (or pursuant to a withdrawal of the reference of jurisdiction) objections to or motions to disallow Claims against the Estate. Any Claim as to which an objection to or motion to disallow is not timely filed by the ninetieth (90th) day following the Confirmation Date (“Claim Objection Deadline”) shall be deemed an Allowed Claim, unless such Claim is subject to disallowance under Section 502(d) of the Bankruptcy Code, in which case such Claim shall be deemed disallowed in accordance with Section 502(d) of the Bankruptcy Code without the need for filing an objection thereto.

- b. Upon the filing of an objection or motion to disallow a Claim against the Estate, such Claim shall be considered a Disputed Claim. Property, proceeds, and/or cash otherwise distributable to the Holder of a Disputed Claim shall be held by the Plan Administrator in a reserve until final resolution of the objection. No payments or distributions shall be made with respect to the portion of a Claim that is a Disputed Claim pending the entire resolution thereof by Final Order. The resolution of any objection to or motion to disallow a Claim shall be governed by the Bankruptcy Code, the Bankruptcy Rules, the Confirmation Order, the Plan or such other provisions as may be established by the Court.
 - c. Upon the Effective Date, any and all pending claim objections filed by the Debtor shall be transferred and vested with the Plan Administrator, who shall have the sole and exclusive authority after the Effective Date to prosecute such matters.
- 8.3 Late Claims. No Distribution shall be made on account of any Claims filed after the applicable Bar Date.

ARTICLE VIII EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Absent explicit assumption herein or by the Plan Administrator within 30 days of the Effective Date, **all executory contracts shall be deemed rejected**. A party entitled to enforce an unexpired lease or executory contract shall have the rights afforded under Section 502 of the Bankruptcy Code and Fed. R. Bankr. P. 3002. The deadline for filing a proof of claim based on rejection of an executory contract shall be forty-five (45) calendar days after the Effective Date of the Plan. Any Allowed Claim for damages resulting from rejection of an unexpired lease or executory contract shall be a Class 3 General Unsecured Claim.

The following executory contracts shall be assumed herein:

- Car Mark Agreement with CAI Rail Inc.
- Track Use Agreement with Revolution Rail Company Adirondack, LLC

ARTICLE IX RETENTION OF JURISDICTION

9.1 Jurisdiction Retained. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction

over all matters arising out of, or related to, this Chapter 11 Case, the Plan and the Reorganized Debtor to the fullest extent permitted by law, including, among other things, jurisdiction to:

- a. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim not otherwise allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;
- b. To hear and determine the sale of the Saratoga Assets free and clear of all liens, claims, and encumbrances with all Liens, Claims and encumbrances to attach to Saratoga Net Sale Proceeds;
- c. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code; provided, however, that from and after the Effective Date, the payment of the fees and expenses of the Reorganized Debtor shall be made in the ordinary course of business or as provided in this Plan and shall not be subject to approval of the Bankruptcy Court unless Plan Administrator receives written notice of an objection to such fees and/or expenses;
- d. Hear and determine all matters with respect to the rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable;
- e. Effectuate performance of and payments under the provisions of the Plan;
- f. Hear and determine any and all adversary proceedings, motions, applications and contested matters arising out of, under, related to, the Chapter 11 Case;
- g. Enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- h. Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- i. Consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- j. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, consummation, or enforcement of the Plan or the Confirmation Order;

- k. Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;
- l. Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, including this Plan;
- m. Enforce all orders, judgments, injunctions, indemnifications and rulings entered in connection with the Chapter 11 Case;
- n. Except as otherwise limited herein, recover all Assets of the Debtor and property of the Estate, wherever located;
- o. Hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346-505 and 1146 of the Bankruptcy Code;
- p. Modify the Plan or at the request of the Plan Administrator and as provided by applicable law;
- q. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code; and
- r. Enter a Final Decree closing the Chapter 11 Case.

ARTICLE X

CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE

10.1 Conditions to Confirmation. The Confirmation Order shall have been entered.

10.2 Conditions to Effective Date. Notwithstanding any other provision of the Plan or the entry of an order confirming this Plan, the Plan shall not become effective and the Plan Administrator shall not be required to perform its obligations under the Plan unless and until the following events have occurred or have been performed:

- a. The Plan must be confirmed by a Confirmation Order;
- b. No request for revocation of the Confirmation Order under Section 1144 of the Bankruptcy Code shall have been made or if made, shall remain pending, including any appeal; and

ARTICLE XI

AMENDMENT OF OPERATING AGREEMENT, ARTICLES OF INCORPORATION AND/OR BYLAWS OF DEBTOR

Upon the Effective Date of this Plan, the Operating Agreement, Articles of Incorporation, and/or Bylaws of the Debtor shall be deemed amended and modified to the extent necessary to effectuate the provisions of the Plan as set forth above.

ARTICLE XII MISCELLANEOUS

12.1 Payment of Statutory Fees All fees payable pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing shall be paid on or before the Effective Date. All fees payable and arising after the Confirmation Hearing pursuant to 28 U.S.C. § 1930 shall be paid by the Plan Administrator as required by applicable law.

12.2 Modifications and Amendments. At any time prior to the Confirmation Date, the Debtor may alter, amend, modify, revoke or withdraw the Plan or any Plan exhibit or schedule under Section 1127(a) of the Bankruptcy Code including any action to amend or modify the Plan to satisfy the requirements of Section 1129(b) of the Bankruptcy Code, if necessary in its sole and absolute discretion. After the Confirmation Date and prior to the substantial consummation of the Plan, as defined in Section 1101(2) of the Bankruptcy Code, the Plan Administrator may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omissions or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan and such proceedings do not materially adversely affect the treatment of Holders of the Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

12.3 Severability of Plan Provisions. If, prior to the Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.4 Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims against the Debtor, any of the Debtor's successors and assigns, and all other parties-in-interest in this Chapter 11 Case, including without limitation, any Person receiving or entitled to receive payments or property under the terms of this Plan. In accordance with Section 1142(b) of the Bankruptcy Code, on and after the Effective Date, the Plan Administrator shall be deemed authorized and empowered to execute or deliver or to join in the execution or delivery of any instrument (including without limitation this Plan) required to effect a transfer of property dealt with by the Plan, and to perform any other act, including the satisfaction of any Lien, that is necessary for the consummation of the Plan. If

any necessary party refuses or fails to execute, deliver or join in the execution or delivery of any instrument required to effect a transfer of property dealt with by the Plan or perform any other act, including the satisfaction of a lien necessary to consummation of the Plan, or execution of an assignment pursuant to the Plan, the Court may order the same or order the Clerk of the Court to execute the document, release, assignment or other instrument or agreement.

12.5 Revocation, Withdrawal, Cram-Down or Non-Consummation. The Debtor reserves the right to amend, revoke, or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of reorganization or liquidation. If the Debtor amends, revokes or withdraws the Plan, or if Confirmation or consummation does not occur, then (a) the Plan shall be null and void in all respects, (b) assumption or rejection of executory contracts and unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Person, (ii) prejudice in any manner the rights of any Person in any further proceedings involving the Debtor, or (iii) constitute an admission of any sort by the Debtor, or any other Person.

12.6 Satisfaction of Claims. Except as otherwise provided herein or in the Confirmation Order, the rights afforded in this Plan and the payments and Distributions to be made hereunder shall be in complete exchange for, and in full satisfaction, discharge and release of, all existing debts and Claims of any kind, nature or description whatsoever against the Debtor or any of its Assets; and upon the Effective Date, all existing claims against the Debtor shall be, and be deemed to be, exchanged, satisfied, discharged and released in full; and all Holders of Claims shall be precluded from asserting against the Debtor, the Plan Administrator or the Assets any other or further Claim based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such Holder filed a proof of claim. This Plan, and the terms hereof, supersedes and replaces any promissory notes, leases, loan agreements, contracts or other written agreements between the Debtor and any of the Holders of Claims, except as otherwise expressly provided in this Plan.

12.7 Effect of Confirmation Order. Except as provided for in this Plan, the Confirmation Order shall be a judicial determination of satisfaction of all Claims against the Debtor with regard to all debts that arose before the Effective Date and any liability on a claim that is determined under Section 502 of the Bankruptcy Code as if such claim had arisen before the Effective Date, whether or not a proof of claim based on any such debt or liability is filed under Section 501 of the Bankruptcy Code and whether or not a claim based on such debt or liability is allowed under Section 502 of the Bankruptcy Code.

12.8 Enforcement of Claims and Reservation of Rights. Subject to Bankruptcy Court approval, the Plan Administrator shall retain and enforce (or compromise and settle) all Claims and Causes of Action belonging to the Debtor or the Estate including any appeals, pursuant to Section 1123(b)(3) of the Bankruptcy Code, including, but not limited to, all claims under Sections 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any Claims arising or owing under any insurance policies or contracts of insurance. Except as otherwise explicitly provided in this Plan, nothing shall affect the Plan Administrator's or the Estate's Claims, Causes of Action, rights and defenses, both legal and equitable with respect to any claim filed or asserted

against the Plan Administrator, the Debtor, or the Estate, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoffs or recoupment and all such rights and defenses. Instead, these claims, Causes of Action, rights and defenses of the Plan Administrator, the Debtor, or the Estate shall be deemed specifically reserved and shall not be deemed, waived or abandoned at any time.

12.9 Successors and Assigns. The rights, benefits and obligations of any named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

12.10 Notices. Any notice, request or demand required or permitted to be provided under this Plan shall be in writing and served by either: (i) mail, postage prepaid; (ii) hand delivery; or (iii) reputable overnight courier service, freight prepaid, to be addressed as follows:

Markus Williams Young & Hunsicker, LLC
1750 Sherman Street, Suite 1950
Denver, Colorado 80203
Attention: Jennifer Salisbury

12.11 Headings. The headings used in the Plan are solely for the convenience of the reader and do not in any way limit, expand or modify the provisions of the Plan to which they refer.

12.12 Definitions. All terms defined by the Bankruptcy Code and which are not defined in the Plan shall have the meaning given to such term by the Bankruptcy Code, unless the context otherwise requires.

12.13 Performance on the Effective Date. Any act required by the Plan to be done on the Effective Date may be done within a reasonable time thereafter without constituting a default under the Plan.

12.14 Attorneys' Fees. In the event that any party brings an action to enforce or interpret the provisions of the Plan following the Confirmation Date, including any proceedings, disputes or contested matters regarding Professional Fee Claims, the prevailing party in such action shall be entitled to its costs and reasonable attorneys' fees incurred in prosecuting or defending such action.

12.15 Exculpation. The Debtor and any of its respective agents, managers, representatives, attorneys, accountants, advisors or Professionals shall not have nor shall incur any liability for any past or present actions taken or omitted to be taken under, in connection with, related to, affecting or arising out of this Chapter 11 Case, the confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for claims based on gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan or in the context of this Chapter 11 Case.

The Plan Administrator, and any of his respective agents, managers, representatives, attorneys, accountants, advisors or Professionals shall not have nor shall incur any liability for any past or present actions taken or omitted to be taken under, in connection with, related to, affecting or arising out of this Chapter 11 Case, the confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for claims based on gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan or in the context of this Chapter 11 Case.

Dated this 30th day of September, 2021.

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

/s/ Jennifer Salisbury

Jennifer Salisbury, #37268

1775 Sherman Street, Suite 1950

Denver, Colorado 80203

Telephone (303) 830-0800

Facsimile (303) 830-0809

jsalisbury@markuswilliams.com

*Attorneys for Saratoga and North Creek
Railway, LLC*

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) dated as of August __, 2021, between SARATOGA AND NORTH CREEK RAILWAY, LLC, an Illinois limited liability company (the “Seller”), and REVOLUTION RAIL HOLDING COMPANY, LLC, a New York limited liability company (the “Purchaser”).

RECITALS

A. The Seller owns fee and leasehold interests in, or otherwise owns or possesses, certain railroad and related assets located in New York.

B. On March 30, 2020, a voluntary petition was filed by the Seller (the “Saratoga Chapter 11 Case”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), filed as Case No. 20-12313-TBM in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”).

C. The Seller desires to sell to the Purchaser, and the Purchaser desires to purchase from the Seller, certain tangible and intangible assets associated with the business of Seller as described in this Agreement and in the Schedules to this Agreement, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with the Bankruptcy Code

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

ARTICLE I DEFINITIONS

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

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

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

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

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

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

“Bid Procedures” shall have the meaning set forth in the Bid Procedures Motion or Plan of Reorganization.

“Bid Procedures Motion” shall mean, if filed, that certain Trustee’s Motion for Entry of Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Seller’s Assets; (B) Approving Procedures for the Assumption, Assignment, and Sale of Unexpired Leases; (C) Approving the Form and Manner of Notice of the Auction and Sale Hearing; (D) Scheduling an Auction and Sale Hearing, and (E) Granting Related Relief, filed _____, at docket _____ in the Saratoga Chapter 11 Case.

“Bid Procedures Order” shall have the meaning set forth in the Bid Procedures Motion.

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

“Business Day” means any day of the year, other than any Saturday, Sunday, or any federal holiday.

“Causes of Action” means any and all of Seller’s actions, claims, proceedings, causes of action, suits, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, directly or derivatively, in law, equity or otherwise, and also including, without limitation actions under chapter 5 of the Bankruptcy Code.

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

“Closing” shall have the meaning set forth in Section 2.7.

“Closing Date” shall have the meaning set forth in Section 2.7.

“Confirmation Order” shall mean an Order of the Bankruptcy Court approving the Plan of Reorganization and approving the Bid Procedures for the sale of the Assets pursuant to this Agreement.

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

“Deposit” shall have the meaning set forth in Section 2.5(a).

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

“Excluded Liabilities” shall have the meaning set forth in Section 2.4.

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

“Governmental Authorities” shall mean and include any ministry, agency, board, bureau, executive, court, commission, department, tribunal, instrumentality or administration of the United States, or any State, and any local, municipal or other governmental body in a State of the United States.

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

“Intellectual Property” shall mean all (i) trademarks, service marks, trade names, logos and corporate names and registrations and applications for registration and thereof, together with all of the goodwill associated therewith; (ii) registered copyrights; (iii) computer software (other than general

commercial software), data, databases and documentation thereof; and (v) domain names and URLs used in the course of operating Saratoga.

“Knowledge” or “to the best of the Seller’s knowledge”, in each case with respect to Seller, means the actual knowledge of Seller.

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

“Liability” means, as to any Person, any debt, Claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed. “

“Liens” shall, with respect to the Purchased Assets, have the meaning set forth in Section 101(37) of the Bankruptcy Code.

“Non-Saratoga Titled Assets” shall have the meaning set forth in Section 2.1(r).

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

“Permits” means all federal, state, local or foreign permits, grants, easements, consents, approvals, authorizations, exemptions, licenses, franchises, certificates or orders of, any governmental authority, required for the Seller to own its assets or conduct its business as an operating railroad.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

“Petition Date” shall mean March 30, 2020.

“Plan of Reorganization” shall mean a plan of reorganization filed by the Trustee in the Saratoga Chapter 11 Bankruptcy Case incorporating this Agreement.

“Proceedings” shall have the meaning set forth in Section 2.4(e).

“Purchaser” has the meaning set forth in the introductory paragraph.

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

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

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

“Saratoga” shall mean Saratoga and North Creek Railway, LLC, an Illinois limited liability company and debtor in the Saratoga Chapter 11 Case.

“Saratoga Rail Lines” shall mean those lines identified on Exhibit A.

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

“Seller” shall mean Saratoga and North Creek Railway, LLC, an Illinois limited liability company and debtor in the Saratoga Chapter 11 Case.

“Taxes” shall have the meaning set forth in Section 2.4(c).

ARTICLE II

PURCHASE AND SALE OF ASSETS

2.1 Purchase and Sale of Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, and subject to the Bankruptcy Court approvals specified in Article 8, on the Closing Date, Seller shall sell and deliver to the Purchaser, and the Purchaser shall purchase from Seller, all of Seller’s right, title and interest in and to the assets specified below (the “Purchased Assets”), in each case free and clear of any Liens, Claims, encumbrances or interests, except as specifically permitted in this Agreement, as approved for sale, transfer and assignment pursuant to the Sale Order.

- (a) The Saratoga Rail Lines.
- (b) All real and personal property owned by Seller, including without limitation all roadbed, track, bridges and culverts, signals and communications facilities, dispatching systems and equipment, stations, depots, yards, shops, parking and storage facilities, buildings and structures, facilities and other fixtures, and every other type of property owned by Seller and which were used by Seller in connection with its railroad operations, in each case located on, along, over and under the Saratoga Rail Lines.
- (c) All trackage rights agreements, running rights agreements, interchange agreements, car switching agreements, haulage agreements and other operating agreements to which Seller is a party (the “Operating Agreements”), as listed on Schedule 2.1(d).
- (d) All unexpired real and personal property Leases selected by Purchaser and listed on Schedule 2.1(f), and all interests of Seller in such Leases, including real estate fixtures, leaseholder improvements, security and other deposits, common-area-maintenance refunds, adjustments, and other amounts payable to such Seller under or in respect of such Leases (the “Assigned Leases”).
- (e) All uninstalled rail, ties and other track material, stores of fuel, spare parts, inventory, desks, chairs and office equipment (including telephones, fax machines, photocopiers, computers and printers, computer software and any related hardware), supplies, machinery and tools (other than employee hand tools) owned by Seller and used in the operation of Seller’s business.
- (f) All warranty, indemnification and similar rights of Seller under any agreement relating to the Purchased Assets, to the extent transferable.
- (g) The name “Saratoga and North Creek Railway, LLC” and any other confusingly similar names.

- (h) All of Seller's Intellectual Property.
- (i) All of Seller's maps, plans, title deeds, track charts, documents, and other books and records relating to the ownership and former operation of the Saratoga railroad and railroad-related assets (to the extent not identified as Excluded Assets in Section 2.2).
- (j) All customer lists, trade secrets, and other proprietary and confidential information that relate to, or are material to, or are used and useful in connection with, the ownership and former operation of the Saratoga railroad, including all relevant books and records.
- (k) All Governmental Permits (to the extent transferable) and all other licenses, rights, or authorizations and related documents that relate to, or are material to, or are used and useful in connection with, the ownership and former operation of the Saratoga railroad.
- (l) All agreements that generate income streams from property rentals, pipe, wire and utility crossing licenses and easements, and all similar agreements and/or arrangements relating to the Saratoga Rail Lines, and any renewals thereof, provided, however, that all amounts due and owing under such agreements as of the Closing Date shall be payable only to Seller and shall constitute Excluded Assets.
- (m) All of Seller's rights under any easement purchase agreements; provided, however, that all amounts due and owing under such agreement as of the Closing Date shall be payable only to Saratoga and shall constitute Excluded Assets.
- (n) [Reserved.]
- (o) Any and all other Seller's property, whether tangible or intangible, real, personal or mixed.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement, the Purchased Assets shall not include cash, Causes of Action and pre-closing insurance claims (the "Excluded Assets").

2.3 Assumed Liabilities. Purchaser shall assume from Seller the liabilities described in this Section 2.3 (the "Assumed Liabilities"):

- (a) All of the cure costs required by orders approving the assumption and assignment of the Assigned Leases pursuant to section 365 of the Bankruptcy Code and all of Seller's obligations arising and relating to the period on or after the Closing Date under the Assigned Leases.
- (b) All of Seller's obligations arising on or after the Closing Date relating to the Real Property (as defined in Section 3.5), including without limitation obligations arising under leases, easements, crossing agreements, and the like.
- (c) Any amounts payable pursuant to Sections 365(b)(1)(A), (B) or (C) of the Bankruptcy Code, or as otherwise agreed between Purchaser and the counterparty

to any Assigned Lease, in order to effectuate, pursuant to the Bankruptcy Code, the assumption by Seller and assignment to the Purchaser of the Assigned Leases.

2.4 Excluded Liabilities. Except for the Assumed Liabilities, the Purchaser shall not assume any liability or obligation of any of Seller, and Seller shall remain fully liable and responsible for all liabilities and obligations that are not expressly assumed by Purchaser pursuant to Section 2.3 (the “Excluded Liabilities”). Without limitation of the foregoing, Purchaser and Seller agree for purposes of clarity that the following liabilities and obligations shall not be assumed by Purchaser:

- (a) Any obligation of Seller as of Closing to its employees for compensation (including salary, bonuses, vacation and sick leave), benefits (including insurance and pensions), or severance pay associated with their employment by Seller or the termination of that employment, including without limitation any liabilities arising under (i) any employment, consulting, advisory or service agreement, plan, commitment, arrangement or understanding, (ii) any employee benefit, deferred compensation or severance agreement, plan, commitment, arrangement or understanding (including, without limitation, any stock option, stock purchase, bonus, incentive and similar agreement, plan, commitment, arrangement or understanding); and (v) COBRA, the WARN Act or any other applicable law or regulation of the United States or any state, province or subdivision thereof.
- (b) Indebtedness for borrowed money or accounts payable of Seller (other than the cure costs required by orders approving the assumption and assignment of Assigned Leases pursuant to section 365 of the Bankruptcy Code).
- (c) (i) All federal, state, local, foreign and other taxes, levies, fees, imposts, duties, governmental fees and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto), whether or not imposed on Seller, including, without limitation, taxes imposed on, or measured by, income, franchise, profits, gross income or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, stock transfer, license, payroll, withholding, employment, social security, workers’ compensation, unemployment compensation, utilities, severance, production, excise, stamp, occupation, premium, windfall profits, environmental, transfer and gains taxes and customs duties (“Taxes”), and including, without limitation, Taxes attributable to Seller being a member of an affiliated group or other group filing on a combined or unitary basis and any liability arising from a Seller being a party to a Tax sharing or indemnity agreement relating to the Purchased Assets, including the sale thereof, in each case for all periods ending on or before the Closing Date, including the Pre-Closing portion of any tax period beginning before but ending after the Closing Date; (ii) all transfer taxes relating to the transfer of the Purchased Assets; and (iii) any and all liabilities and obligations of Seller or any affiliate of Seller for Taxes (including, without limitation, Taxes attributable to Seller being a member of an affiliated group or other group filing on a combined or unitary basis and any liability arising from a Seller being a party to a Tax sharing or indemnity agreement).
- (d) Seller’s professionals’ fees and expenses for its advisors, including, without limitation, advisors retained pursuant to an order of the Bankruptcy Court.
- (e) The costs incurred and expenses paid or payable by Seller or any of its affiliates in

connection with the administration of the Saratoga Chapter 11 Case, or any other bankruptcy, regulatory, court or similar proceeding involving Seller or any of its affiliates (collectively, the “Proceedings”) including (i) obligations to pay professionals’ fees and expenses in connection with the Proceedings (including fees of attorneys, accountants, investment bankers, financial advisors, and consultants retained by the Seller or any of its affiliates, any official or unofficial committee or any pre-petition lenders, and any compensation for making a substantial contribution to the Proceedings), and reimbursement of any expenses incurred by the Seller or its affiliates prior to the Closing Date in connection therewith (including any obligations to pay any holdback of any such fees and expenses), (ii) fees and expenses payable to the United States Trustee under 28 U.S.C. § 1930, and (c) expenses of members of any official or unofficial committee.

- (f) Except as otherwise expressly provided in this Agreement, any obligations arising from or related to actions, circumstances, occurrences or omissions prior to the Closing Date under any assumed, rejected or other contract, lease or agreement.
- (g) Any and all liabilities of the Seller or its affiliates to any creditors, interest holders or other parties in interest in the Proceedings accrued prior to the Closing Date.
- (h) Any claims, causes of action, regulatory actions, enforcement proceedings or Liabilities relating to the Real Property prior to the Closing Date.

2.5 Deposit.

- (a) Upon execution of this Agreement, Purchaser shall deliver to Seller’s attorney the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (the “Deposit”). The Deposit shall be credited as a partial payment of the Purchase Price payable at the Closing. The Deposit shall, at all times prior to its release or return in accordance with the terms of this Agreement, be held by Purchaser’s attorney in its client trust account in accordance with the terms of this Agreement. The Deposit shall not accrue any interest for the benefit of Seller, Purchaser, or Purchaser’s attorney in accordance with Vermont state law pertaining to client trust accounts.
- (b) In the event that (i) the parties terminate this Agreement pursuant to Section 10.1(a), (ii) Purchaser terminates this Agreement pursuant to Section 10.1(b), or (iii) Seller terminates this Agreement pursuant to Section 10.1(c)(i), 10.1(c)(iii), 10.1(c)(iv), or 10.1(c)(v) (only if the Closing does not occur under 10.1(c)(v) as a result of the Purchaser), then the Deposit shall be returned immediately and in full to Purchaser.
- (c) The Deposit shall be released to the Seller in the event that (A) the Agreement is terminated by the Seller pursuant to Section 10.1(c)(ii) or (B) (x) all of the conditions set forth in Section 8.2 have been satisfied or waived by Purchaser, (y) the Closing does not occur on or before December 31, 2021 (or on such other extended date upon which the parties mutually agree in writing) through no fault of the Seller, and (z) the Agreement is terminated by the Seller pursuant to Section 10.1(c)(v).
- (d) The Deposit shall be returned immediately and in full to Purchaser pursuant to

Section 5.4(a).

2.6 Purchase Price. The purchase price for the Purchased Assets (the “Purchase Price”) is Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) plus the Assumed Liabilities. Except as otherwise specified in this Agreement, the term “Dollars” or “\$” as used in this Agreement refers to United States Dollars.

2.7 Closing. The closing (the “Closing”) shall occur (i)(A) no later than seven (7) days following the satisfaction of the conditions to close, including, but not limited to, obtaining the Sale Order approving the sale of the Purchased Assets to Purchaser in accordance with this Agreement; or (B) no later than forty-five days (45) days following the date upon which the Plan of Reorganization becomes effective or January 15, 2021, whichever date is later; or (ii) on such other date as may be mutually agreed by the parties. At Closing, Purchaser shall pay the Purchase Price, less the Deposit, to Seller by bank check or wire transfer of immediate funds. Purchaser’s attorneys shall arrange for the Deposit to be delivered to Seller.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser as follows, conditioned upon and subject to the entry of the Sale Order:

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

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

3.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing, or registration with, any Governmental Authorities is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement as contemplated in this Agreement, except for: (a) consents, approvals, or authorizations of, or declarations or filings with, the Bankruptcy Court; (b) the filing of such deeds, assignments or other conveyance documents as may be required to transfer Seller’s interest in any Purchased Assets, the title to which is governed by filing in the public records; (c) the filing of such documents as may be necessary to reflect the release of any security interests, Liens, pledges, charges, escrows, options, rights of first refusal, mortgages, indentures, security interests or other encumbrances as a matter of public record; (d) any consents or approvals related to permits and licenses transferred or assigned to Purchaser hereunder; (e) any necessary approval, authorization or exemption by the United States Department of Transportation, the Federal Railroad Administration, Surface Transportation Board, and any other Governmental Authorities with jurisdiction over and the right to approve the sale, taking into account Sections 1161-1174 of the Bankruptcy Code; and (f) consents, approvals, authorizations, declarations, filings or registrations which, if not obtained, individually or in the aggregate, would not have a material adverse effect on the transactions contemplated in this Agreement.

3.4 Title to and Condition of Purchased Assets. Seller has good record title to, or a valid leasehold interest in, as applicable, all of the Purchased Assets in each case free and clear of all liabilities, security interests, Liens, mortgages, Claims, encumbrances, rights, remedies and interests of any kind

whatsoever, except for (i) permitted encumbrances as to the Real Property, (ii) those Liens, Claims, encumbrances, remedies and interests that will be released pursuant to the Sale Order or the Plan of Reorganization and Confirmation Order, (iii) any tax liens, and (iv) the Assumed Liabilities.

35 Owned and Leased Real Property. Attached as Schedule 3.5 is a true and complete list of all real estate, fixtures and real property and immovable rights (whether in the form of ownership or leasehold rights) held by Seller and included in the Purchased Assets (the “Real Property”), including the nature of Seller’s ownership interest therein. The Real Property includes the rail yards and other operating facilities identified on Schedule 3.5 and the uninterrupted railroad rights-of-way over the routes identified on Schedule 3.5, sufficient to permit continuous railroad operations by Purchaser along those routes following Closing.

36 Litigation. With the exception of the Adverse Abandonment Proceeding filed by the New York State Department of Environmental Conservation pending before the Surface Transportation Board at docket no. AB 1261 (the “Abandonment Proceeding”), Seller is not a party to any Litigation and to Seller’s knowledge, there are no pending or threatened investigations, lawsuits, actions, Claims, or legal or administrative proceedings against or relating to the Purchased Assets, or Seller’s business, whether at law or in equity, or before or by any Federal, state, local, foreign or other governmental court, department, ministry, commission, board, bureau, agency or instrumentality which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Purchased Assets (without accounting for the effect of the Sale Order) or impose any costs on Purchaser after Closing or affect the ownership and/or the operation of the railroad business of Purchaser following Closing. Other than any orders which have been or may be entered in the Abandonment Proceeding, there are no judgments, decrees, injunctions or orders of any court, governmental department, ministry, commission, board, bureau, agency, instrumentality or arbitrator against or relating to the Purchased Assets which, individually or in the aggregate, (without accounting for the effect of the Sale Order) could reasonably be expected to have a material adverse effect on the Purchased Assets or the operation of the railroad business of Purchaser following Closing.

37 Contracts and Leases. All material contracts, agreements, licenses, permits, certificates, and other arrangements, oral or written (collectively, the “Contracts”) that pertain to or affect the Purchased Assets, or any part thereof, or any of the Seller’s business operations, have been made available to the Purchaser. All material lease agreements (collectively, the “Leases”) that pertain to or affect the Purchased Assets, or any part thereof, or Seller’s business operations, have been made available to the Purchaser. Seller shall make available to Purchaser true and correct copies of all Contracts and Leases within five (5) days after the date of this Agreement. Should Seller enter into any new Contract or Lease between the date of execution of this Agreement and Closing, Seller shall promptly provide Purchaser with a true and correct copy of any such new Contract or Lease.

38 Material Adverse Changes. Except as specifically set forth on Schedule 3.9, there has not been since August 20, 2021:

- (a) any damage, destruction or loss (whether or not covered by insurance) affecting any asset or property of the Seller that is material to the conduct of the Seller’s business;
- (b) any sale, lease, abandonment or other disposition by Seller in any interest in the Purchased Assets, other than in the ordinary course of business;
- (c) any material labor dispute, organizational effort (including without limitation any negotiation or request for negotiation for any representation or any labor contract)

with respect to the Seller, whether or not affecting the Seller's business or the Purchased Assets; or

- (d) any other occurrence, event or condition to Seller's knowledge that adversely affects or could adversely affect the Purchased Assets or the Seller's business.

Seller shall have an ongoing obligation to timely supplement Schedule 3.9 with relevant events until the Closing Date.

3.9 Employees. Seller has no employees as of the date of this Agreement.

3.11 No Breach. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement do not and will not, with or without giving notice or the lapse of time or both, (a) violate or conflict with the governing documents of the Seller; (b) violate or conflict with, in any material respect, any law to which the Seller or the Purchased Assets are subject; (c) breach or conflict with, constitute or create a default under, or give rise to any right of termination, cancellation or acceleration under, any of the terms, conditions or provisions of any Assigned Lease, except for breaches or conflicts which would not have or reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the Seller to perform its obligations under this Agreement.

3.12 Permits. The Seller possesses all Permits required or necessary to own, operate, use and maintain its assets and conduct its business as now being conducted, consistent with past practice, except where the failure to have possession of such Permits would not be reasonably likely to be, individually or in the aggregate, material to the operation of the Saratoga. Each Permit is valid, binding and in full force and effect, and other than the Abandonment Proceeding there are no proceedings pending or, to the best of Seller's knowledge, threatened that would reasonably be expected to result in the termination, revocation, suspension, restriction or cancellation of any Permit or the imposition of any material fine, penalty, sanction or other losses for violation of any law relating to any Permit.

3.13 Federal Railroad Administration. There are no pending or, to the knowledge of Seller, threatened Federal Railroad Administration fines or penalties against the Seller.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

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

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

4.3 Consents and Approvals. No consent, approval or authorization of, or declaration, filing,

or registration with, any Governmental Authority is required to be made or obtained by Purchaser in connection with the execution, delivery and performance of this Agreement contemplated in this Agreement, except for (a) consents, approvals, or authorizations of, or declarations or filings with, the Bankruptcy Court; (b) the filing of such deeds, assignments or other conveyance documents as may be required to transfer Seller's interest in any Purchased Assets, the title to which is governed by filing in the public records; (c) consents and approvals necessary to transfer the permits and licenses being purchased by the Purchaser hereunder; (d) any necessary approval, authorization or exemption by the United States Department of Transportation, the Federal Railroad Administration, Surface Transportation Board, and any other Governmental Authorities with jurisdiction over and the right to approve the sale, taking into account Sections 1161-1174 of the Bankruptcy Code; (e) approval of a railway safety management system pursuant to the Railway Safety Act, and (f) consents, approvals, authorizations, declarations, filings or registrations which, if not obtained, individually or in the aggregate, would not have a material adverse effect on the transactions contemplated in this Agreement.

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

4.5 WHERE-IS/AS-IS. Purchaser and any assignee(s) agree to accept the Purchased Assets in a "WHERE-IS, AS-IS" condition as of the Closing Date free and clear of any Liens, Claims, encumbrances, rights, remedies or interests, except as specifically permitted in this Agreement. Without limitation of the foregoing, Purchaser acknowledges, represents and warrants to Seller that Purchaser has not been induced to execute this Agreement by any act, statement or representation of Seller or its agents, employees or other representatives not expressly set forth in this Agreement.

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

ARTICLE V COVENANTS PRIOR TO AND IN FURTHERANCE OF CLOSING

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

(a) Seller's Covenants.

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

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

- (2) Operation of Business. Conduct its business in the ordinary course. Without limiting the foregoing, except as expressly consented to by Purchaser in writing, from the date of this Agreement until the Closing Date, Seller covenants and agrees (i) to take no action which could reasonably be expected to affect or result in a material adverse change in the Purchased Assets, (ii) to operate its business as a going concern in the ordinary course and to use its commercially reasonable efforts to preserve and maintain any and all material vendor, customer and other business relationships as they pertain to such Seller's business or the Purchased Assets; (iii) not to purchase or dispose of any of the Purchased Assets except in the ordinary course of business; (iv) not to enter into any material commitment, obligation or agreement with respect to or affecting the Purchased Assets or the rail business of Saratoga; and (v) to take no action which could reasonably be expected to impair or frustrate the purposes of this Agreement or the transactions contemplated by this Agreement.
- (3) Insurance. Maintain in full force and effect all insurance coverage currently insuring the Purchased Assets.
- (4) Court Orders. Use its best efforts to secure all required approvals by the Bankruptcy Court without modification including, without limitation, approval of the Bid Procedures Order or the Confirmation Order, and shall otherwise use its best efforts to cause the transactions contemplated by this Agreement to occur in accordance with the terms and conditions hereof.
- (5) Notification of Certain Matters. To the extent not prohibited by law, Seller shall notify Purchaser of (i) any material adverse change relating to the Purchased Assets; (ii) any governmental or third party complaint, investigation or hearing (or communications indicating that any are contemplated); (iii) any material breach by Seller of any agreement or representation or warranty hereunder; (iv) any judicial, regulatory, administrative, enforcement or other proceeding or action commenced against Seller in the United States; and (v) any change in any license, certificate of fitness or other authority for the Seller to operate its business or operate as a railroad under applicable law or procedure.
- (6) Contracts and Leases. Seller shall continue to (i) pay in the ordinary course all amounts when and as due under all Contracts and Leases that relate to or affect any of the Purchased Assets or either of the Seller's business operations, and (ii) perform all other obligations when and as due under such Contracts and Leases; provided, however, that the foregoing sentence shall not apply to any Contracts or Leases that (a) have been rejected by the Seller prior to the date of this Agreement in accordance with applicable law or (b) are rejected by the Seller on or after the date of this Agreement, in accordance with applicable law, if and to the extent

that the Seller has been notified by Purchaser that such Contracts or Leases will not be assumed and assigned hereunder.

- (ii) Negative Covenants Pending Closing. Except as expressly permitted in this Agreement, Seller shall not, without the prior written consent of Purchaser (which shall not be unreasonably withheld):
 - (1) Assigned Leases. Assume, assign, reject, renew, amend or voluntarily terminate any Assigned Lease.
 - (2) Encumbrances. Encumber, sublease or otherwise grant any Liens or other rights or interests with respect to the Purchased Assets; provided, however, that Seller may continue to borrow money under any debtor-in-possession financing arrangements approved by the Bankruptcy Court.
 - (3) [Reserved].
 - (4) Contracts. Enter into any contract, lease or other agreement affecting the Purchased Assets or the rail business of Seller that will be binding on Purchaser, from and after the execution of this Agreement.
 - (5) Intellectual Property. From the date of this Agreement until the Closing, Seller shall not take any action, or fail to take any action, that would have a material adverse effect on any Intellectual Property of Seller, impair the value of such Intellectual Property, or materially impair or interfere with the ability of Purchaser to exercise any and all rights in and to Intellectual Property of Seller from and after the Closing.
- (b) Purchaser's Covenants. Purchaser agrees that it shall use its good faith efforts to take, or cause to be taken, all actions reasonably requested by Seller to assist in obtaining entry of the Sale Order.

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

5.3 Break-Up Fee; Deposit.

- (a) This Agreement is subject to other offers presented to the Seller solely in accordance with the Bid Procedures Order or the Plan of Reorganization. In the event that this Agreement has not already been terminated and the Seller
 - (i) terminates this Agreement and closes a transaction for all or substantially all of the Purchased Assets provided that such transaction has been submitted pursuant to the Bid Procedures Order or the Plan of

Reorganization and is a higher or better offer than the terms set forth in this Agreement;

- (ii) files a motion or motions to sell all or substantially all of the Purchased Assets (in one or a series of transactions) to an alternative purchaser or purchasers other than the Purchaser pursuant to an Order of the Bankruptcy Court and closes on such transaction or series of transactions for all or substantially all of the Purchased Assets; or
- (iii) files with the Bankruptcy Court a proposed Chapter 11 plan that proposes the disposition of all or substantially all of the Purchased Assets to an alternative purchaser or purchasers other than the Purchaser and closes on such transaction or series of transactions for all or substantially all of the Purchased Assets;

then Seller shall:

- (A) return the Deposit to the Purchaser in accordance with Section 2.4(b) of this Agreement and, within three (3) Business Days after the closing of any sale pursuant to such other offer or offers,
- (B) pay to Purchaser, by wire transfer of immediately available funds from the net sales proceeds from the transactions described above in Sections 5.4(a)(i), (ii), or (iii), a break-up fee equal to the sum of Thirty-five Thousand Dollars (\$35,000.00) and all reasonable fees and expenses incurred by Purchaser in connection with this Agreement (including attorneys' fees and expenses (the "Break-Up Fee").
- (b) [Reserved.]
- (c) The Break-Up Fee shall constitute an administrative priority expense under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, shall not be subordinate to any other administrative expense claim against Seller and shall survive the termination of this Agreement. The Bid Procedures Order or Confirmation Order shall approve the Break-Up Fee.

5.4 Overbid. The Bidding Procedures Order or Confirmation Order will provide minimum overbid requirements of: (a) \$50,000 over the Purchase Price, and (b) \$50,000 over the then-highest bid for any additional bids. The Bidding Procedures Order or Confirmation Order also will provide that, for the purpose of determining which bid is the highest and best offer, an amount equal to the Break-Up Fee shall be added to Purchaser' bid. Other auction requirements to be reasonably approved by Buyer in advance of the filing of the Bid Procedures Motion or Plan of Reorganization shall include the nonexistence of financing and due diligence conditions and the requirement that all competing bids be on terms and conditions substantially similar to the terms and conditions set forth in this Agreement.

5.5 Delivery of Schedules. As soon as reasonably practicable, and in no event later than eight (8) days after the execution of this Agreement, the parties shall exchange draft copies of all Schedules contemplated by this Agreement. All such Schedules relating to Article III of this Agreement shall be completed, in any event, no later than five (5) days before the Sale Hearing or hearing on the Plan of Reorganization, and all other Schedules shall be completed prior to the Closing. Notwithstanding the

foregoing, Purchaser shall have the right, at its sole option and discretion, until five (5) days before the Closing, to add or remove Assigned Contracts, Assigned Leases or other assets from the Schedules pursuant to Sections 2.1(e) and 2.1(f) of this Agreement, and such Contracts, Leases or other assets shall be added to (or removed from) such Schedules as specified by Purchaser.

5.6 Access and Information. In order to facilitate the acts, rights, and obligations of Section 5.4, until Closing, Purchaser shall be given reasonable and complete access to the properties and company records, including financial records, maintenance and inspection records, FRA documentation and records, equipment, customer list, collective bargaining agreements, employee files, as well as access to management and employees. The Seller shall continue to provide and/or supplement information requested by the Purchaser during due diligence, including but not limited to (a) a list of all executory contracts that are currently active and known or anticipated cure amounts for each such current contract, (b) a schedule of all of the Seller's vendors covering the past two years including those vendors no longer doing business with the Seller, and (c) a list of claims tendered against any insurance carrier on account of the proposed assets to be purchased. If the transaction is not consummated, the Purchaser will ensure that any information obtained in its investigations of the Seller will be returned to the Seller or otherwise destroyed and not disclosed to any third parties.

5.7 Financial Statements Cooperation and Assistance. The Seller shall reasonably cooperate with Purchaser at Purchaser's expense in a timely manner as reasonably requested by Purchaser in connection with Purchaser's preparation of historical financial statements and pro forma financial information in respect of the Purchased Assets, including making reasonably available to Purchaser the Seller's employees, allowing Purchaser to access and, at Purchaser's expense, copy any and all records in Seller's possession relating to the Purchased Assets, providing reasonable assistance to Purchaser in connection with the preparation of such financial statements, facilitating the delivery from the Seller's independent public accountants relevant consent letters necessary in connection with the foregoing, and providing customary management representation letters required by accountants.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES SURVIVAL

6.1 Survival. The representations and warranties contained in this Agreement shall survive until the Closing Date but shall expire simultaneously with the Closing.

6.2 Purchased Assets Sold "As is, Where is" and without any Representations or Warranties. The Purchased Assets shall be sold and purchased "AS IS, WHERE IS" and without representations or warranties.

(a) Full Investigation. Purchaser is relying solely on its own investigations of the Purchased Assets and is not relying in any way on any information regarding the Purchased Assets furnished by Seller. Purchaser acknowledges and agrees that Purchaser shall be solely responsible for conducting its own investigations and analyses of the Purchased Assets, and that Seller has no obligation to conduct any such investigations, or to report any conclusions of any such investigations, to Purchaser.

(b) Disclaimer. Seller specifically disclaims (and Purchaser expressly agrees that Seller is not making or giving) any covenant, undertaking, representation or warranty, express or implied, in connection with this Agreement, the Purchased Assets or any other matter relating hereto or thereto that survives Closing, including, without limitation, as to the following matters:

(i) the existence on the Closing Date of any specific items constituting the Purchased Assets or the quantity or quality thereof; or

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

(c) **PURCHASER ACKNOWLEDGES AND AGREES THAT (A) THE SALE OF THE PURCHASED ASSETS TO PURCHASER IS: WITHOUT RECOURSE TO SELLER; ON AN "AS IS, WHERE IS" BASIS; WITHOUT ANY REPRESENTATIONS OR WARRANTIES AS TO ITEMS, EXISTENCE, OWNERSHIP, TITLE, DESIGN, CONDITION, WORKMANSHIP, COMPLIANCE OF THE PURCHASED ASSETS WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR ABSENCE OF INFRINGEMENT UPON ANY OTHER INTELLECTUAL PROPERTY RIGHTS, LATENT DEFECTS, QUANTITY, OR ANY OTHER MATTERS WHATSOEVER; (B) SELLER IS SELLING TO PURCHASER ALL CLAIMS AND CONTRACT RIGHTS OF SELLER THAT ARE PART OF THE PURCHASED ASSETS WITHOUT RECOURSE TO SELLER, WITH RESPECT TO THE AMOUNTS OR COLLECTABILITY OF SUCH CLAIMS AND CONTRACT RIGHTS OF SELLER OR THE CREDITWORTHINESS OF ANY OBLIGOR WITH RESPECT TO SUCH CLAIMS AND CONTRACT RIGHTS OF SELLER OR ANY OTHER ASPECT OF SUCH CLAIMS AND CONTRACT RIGHTS OF SELLER; (C) SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALUE, IF ANY, OF THE PURCHASED ASSETS BEING TRANSFERRED HEREBY; AND (D) NEITHER SELLER NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, ATTORNEYS, AGENTS OR REPRESENTATIVES HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER REGARDING THE PURCHASED ASSETS, OR ANY OTHER MATTER IN ANY WAY RELATED TO THE PURCHASED ASSETS, INCLUDING, BUT NOT LIMITED TO, TITLE TO THE PURCHASED ASSETS, USE, MERCHANTABILITY, FITNESS OF PARTICULAR PURPOSE, VALUE, OR ANY OTHER CONDITION OF THE PURCHASED ASSETS.**

(d) Purchaser agrees that its only remedy for any breach of any of Seller's representations, warranties, or covenants in this Agreement is to waive such breach and proceed to Closing or to terminate this Agreement and receive its Deposit.

ARTICLE VII

COMPETING BID AND OTHER MATTERS

If an Auction is conducted, and Purchaser is not the prevailing party at the conclusion of such Auction (such prevailing party, the "Prevailing Bidder"), Purchaser shall, if its bid is determined to be the next highest bid serve as a back-up bidder (the "Back-up Bidder") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until the date of closing of an Alternative Transaction with the Prevailing Bidder.

ARTICLE VIII

CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions to Seller's Obligation to Close. Seller's obligations under this Agreement are subject, at the option of Seller, to the satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

- (a) Representations and Warranties; Covenants.
 - (i) All representations and warranties of Purchaser contained in this Agreement and any related transaction documents shall have been true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date, as if such representations and warranties were made at and as of the Closing Date (except for those representations and warranties that, by their terms, apply only as of an earlier date, which shall have been true and correct as of such date).
 - (ii) Purchaser shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date.
- (b) No Injunction. No injunction, stay or restraining order shall be in effect prohibiting the transactions contemplated in this Agreement. No law, ordinance or regulation shall have been enacted, and no order, judgment, or decree shall have been enacted or rendered by a Governmental Authority or any other person (and not subsequently dismissed, settled, withdrawn or terminated, nor shall any petition, complaint, or action have been filed or be pending that seeks such order, judgment or decree) which would prevent the Closing of or restrain or invalidate the transactions contemplated by this Agreement.
- (c) Sale Order. The Bankruptcy Court shall have entered the Sale Order or Confirmation Order and such order shall not have been stayed, vacated, reversed, modified or supplemented without Purchaser's prior written consent.
- (d) Purchaser's Deliveries. Purchaser shall have paid the Purchase Price, less the Deposit, and shall have duly executed and delivered to Seller each of the documents, instruments and agreements required to be delivered pursuant to Section 8.3(b) of this Agreement.

82 Conditions to Purchaser's Obligation to Close. Purchaser's obligations under this Agreement are subject, at the option of Purchaser, to the satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

- (a) Representations and Warranties; Covenants.
 - (i) All representations and warranties of Seller contained in this Agreement and any related transaction documents shall have been true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date, as if such representations and warranties were made at and as of the Closing Date (except for those representations and warranties that, by their terms, apply only as of an earlier date, which will be true and correct as of such date).
 - (ii) Seller shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date.

- (b) Seller's Deliveries. Seller shall have duly executed and delivered to Purchaser each of the documents, instruments and agreements required to be delivered by Seller pursuant to Section 8.3(a) of this Agreement.
- (c) Bid Procedures Order or Plan of Confirmation. The Bid Procedures shall be in form and substance satisfactory to Purchaser, and, either (1) on or before October 31, 2021, the Bankruptcy Court shall have entered the Bid Procedures Order in form and substance satisfactory to Purchaser expressly approving the Break-Up Fee and the Bid Procedures set forth in the Bid Procedures Motion, and such orders shall have become Final Orders; or (2) on or before October 1, 2021, the Trustee shall have filed the Plan of Reorganization expressly providing for the Break-Up Fee and the Bid Procedures.
- (d) Sale Order or Confirmation Order.
- On or before November 30, 2021, the Bankruptcy Court shall have entered the Sale Order (i) approving the sale of the Purchased Assets to the Purchaser free and clear of all liens, claims and encumbrances (other than Assumed Liabilities) pursuant to *inter alia*, sections 105, 363, and 365 of the Bankruptcy Code, in each case to the extent set forth in this Agreement, (ii) approving the assumption by the Seller and assignment to the Purchaser of any Assumed Leases pursuant to section 365 of the Bankruptcy Code, (iii) containing findings of fact and conclusions of law that the Purchaser is a good faith purchaser entitled to and granted the protections of section 363(m) of the Bankruptcy Code, (iv) containing findings of fact and conclusions of law that the Purchaser is not a successor to, or subject to successor liability for, the Seller, and (v) containing such other terms which are otherwise acceptable to the Purchaser. As of the Closing Date, the Sale Order shall be in full force and effect and shall not have been stayed, vacated, reversed, modified or supplemented without the Purchaser's prior written consent; or
 - On or before December 15, 2021, the Bankruptcy Court shall have entered an Order Confirming Plan of Reorganization authorizing the sale of the Purchased Assets pursuant to the Bid Procedures and such plan shall have become effective. The plan shall (i) approve the sale of the Purchased Assets free and clear of all liens, claims and encumbrances (other than Assumed Liabilities), (ii) approve the assumption and assignment of any Assigned Contracts and Assumed Leases pursuant to Section 365 of the Bankruptcy Code, (iii) contain findings of fact and conclusions of law that the purchaser is not a successor to, or subject to successor liability for, the Seller, and (v) contain such other terms which are otherwise acceptable to the Purchaser.

- (e) Assumption, Assignment and Cure Orders. On or before December 15, 2021, the Bankruptcy Court shall have approved, as part of the Sale Order, Confirmation Order, or otherwise, the terms of the assumption, assignment, and cure for all Assumed Contracts and Assumed Leases in form and substance satisfactory to Purchaser, and such orders shall not have been stayed, vacated, reversed, modified or supplemented without Purchaser's prior written consent.
- (f) No Injunction or Challenge. No injunction, stay or restraining order shall be in effect prohibiting the transactions contemplated in this Agreement. No law, ordinance or regulation shall have been enacted, and no order, judgment, or decree shall have been enacted or rendered by a Governmental Authority or any other person (and not subsequently dismissed, settled, withdrawn or terminated, nor shall any petition, complaint, or action have been filed or be pending that seeks such order, judgment or decree) which would prevent the Closing of or restrain or invalidate the transactions contemplated by this Agreement.
- (g) Revolution Rail Company Lease. Seller and Revolution Rail Company Adirondack, LLC shall have entered into an amendment to the Agreement on Use of Tracks or a new agreement extending the term of such agreement for an additional one (1) year and containing such other terms as shall be agreed upon by the parties.
- (h) Contiguous Line of Railroad. Purchaser shall have determined in its sole judgment that the Purchased Assets conveyed and transferred to it at Closing are sufficient to enable Purchaser to operate uninterrupted through train service over the entirety of the Saratoga Lines after the Closing Date.
- (i) Governmental Restrictions. Purchaser shall have determined that there are no governmental restrictions that would prohibit or unreasonably restrict or interfere with the use of the Purchased Assets for Purchaser's intended purpose.
- (j) Insurance Coverage. Purchaser shall have been able to obtain insurance coverage for the Saratoga Lines in each case on terms and conditions reasonably acceptable to Purchaser.
- (k) No Material Adverse Change. There shall have been no material adverse change in the operations, prospects or financial condition of the Seller's business or the Purchased Assets since the date of this Agreement.

83 Deliveries at Closing.

- (a) Deliveries by Seller. At the Closing, Seller shall deliver or cause the delivery of the following to Purchaser:
 - (i) a copy of the Sale Order;
 - (ii) a copy of any orders approving the assumption and assignment of Assigned Leases;
 - (iii) with respect to the Real Property, quitclaim deeds of sale, without

covenants, duly executed by the Seller in a form reasonably satisfactory to Purchaser.

- (iv) with respect to the tangible and intangible personal property, quitclaim bills of sale and assignment without warranty or other covenants, duly executed by the Seller in a form reasonably satisfactory to Purchaser;
 - (v) all other documents, closing statements, instruments and writings reasonably required to be delivered by the Seller at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably requested by Purchaser or any title insurer to deliver the Purchased Assets free and clear of any Liens, Claims, encumbrances or interests to the extent provided by the Bankruptcy Code each in form and substance reasonably satisfactory to Purchaser and Seller; provided that Seller shall not provide any affidavits or indemnifications to Purchaser or any title insurer, including, but not limited to, any affidavits or indemnifications related to any survey matters or mechanic's liens.
 - (vi) all keys to the Seller's offices and other premises and properties included in the Purchased Assets being sold to Purchaser hereunder, all computer access codes and passwords for computer programs or systems included in the Purchased Assets being sold to Purchaser hereunder, and any other property in the possession of Seller and being sold to Purchaser hereunder; and
 - (vii) certificates of Seller, executed by a duly authorized officer of Seller, in a form reasonably satisfactory to Purchaser.
- (b) Deliveries by Purchaser. At the Closing, Purchaser shall deliver or cause the delivery of the following to Seller:
- (i) the balance of the Purchase Price less the Deposit, in cash or by means of a completed federal funds wire transfer to an account or accounts designated by Seller in writing not later than four (4) Business Days prior to the Closing Date;
 - (ii) counterparts of the instruments referred to in Section 8.3(a) that are to be executed by Purchaser; and
 - (iii) all other documents, closing statements, affidavits, instruments and writings reasonably required to be delivered by Purchaser or its assignee(s) at or prior to the Closing Date pursuant to this Agreement, each in form and substance reasonably satisfactory to Purchaser and Seller.

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

8.5 Closing Costs. The Seller shall pay any applicable recording fees and transfer taxes (both Seller's and Purchaser's portions thereof). Purchaser shall pay for any title insurance obtained by Purchaser for any of the Real Property included in the Purchased Assets. Seller and Purchaser shall each pay one-

half of the closing costs of the title company. Other costs associated with the Closing and transactions contemplated under the Agreement shall be allocated as provided elsewhere in the Agreement. All real estate and property taxes owed for 2021 shall be pro-rated at the closing.

8.6 Cure Costs. The Purchaser shall have sole responsibility for, and shall pay on or prior to the Closing Date or at such other date required by court order, all cure costs required by orders approving the assumption and assignment of Assigned Leases pursuant to section 365 of the Bankruptcy Code.

ARTICLE IX POST-CLOSING OBLIGATIONS

9.1 Post-Closing Access and Information. Seller acknowledges and agrees that from and after the Closing Date, Purchaser will be entitled to possession of all documents, books, records, agreements, and financial data of any sort relating to the Seller's business and the Purchased Assets, which shall be maintained at the chief executive office of Purchaser; provided, however, that Seller, at its sole cost and expense and upon reasonable notice to Purchaser, shall be entitled to reasonable access to, and to make copies of, such books and records as necessary for auditing, tax or litigation purposes, or in connection with any bankruptcy or similar proceedings, or to the extent they relate to assets retained by Seller, and Purchaser shall maintain such books, records and material financial data for a period of at least three (3) years. Furthermore, Purchaser agrees that it shall give the Seller the option of taking possession of any or all of such materials, at the end of such three-year period, to the extent that Purchaser has decided to destroy or throw away such materials. The Purchaser also agrees to make its accounting and record-keeping personnel available to the Seller at reasonable times during normal business hours, to the extent reasonably requested by Seller in connection with its access to and use of such materials.

92 [Reserved.]

93 Regulatory Approvals. Purchaser shall file such applications, petitions or other documents as may be necessary for Purchaser to obtain any required approval or exemption from the Surface Transportation Board, and/or other Governmental Authorities for the transactions contemplated by this Agreement. Purchaser shall be solely responsible for any and all costs and expenses incurred in obtaining such approvals or exemptions. Seller shall cooperate with Purchaser in pursuing such regulatory approvals, and shall provide such information regarding Saratoga and its rail business, and such affidavits, verified statements or oral testimony as Purchaser may require or deem appropriate and are reasonably acceptable to Seller, in connection with such proceedings.

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

ARTICLE X TERMINATION

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

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

(b) By Purchaser:

- (i) By Purchaser, in the event of a material violation or material breach by any Seller of its agreements, covenants, representations or warranties contained in this Agreement; provided, however, that such violation or breach shall not have been waived or cured within ten (10) days following receipt by Seller of written notice of such breach from Purchaser, and provided, further, that Seller is not then in material breach of this Agreement; or
- (ii) By Purchaser, at any time after the Bid Procedures Order or Confirmation Order is entered, if such order is (I) vacated, reversed or stayed, or (II) modified or amended in a manner materially adverse to the Purchaser; or
- (iii) By Purchaser, if the Bid Procedures Order is not entered by the Bankruptcy Court on or before November 1, 2021, or alternatively, if the Plan of Reorganization is not filed before October 1, 2021; or
- (iv)
- (v) By Purchaser, if the Sale Order is not entered by the Bankruptcy Court within forty-two (42) days following the Auction Date, or alternatively, if the Confirmation Order is not entered on or before December 15, 2021; or
- (vi) By Purchaser, if the Closing does not occur on or before one hundred fifty (150) days after the date of this Agreement (or on such other extended date upon which the parties mutually agree in writing) through no fault of Purchaser and Purchaser is not in default of this Agreement; or
- (vii) By Purchaser if, prior to the Closing, a material amount of the Purchased Assets is destroyed or substantially damaged by fire, explosion, act of God, collapse or other casualty or if condemnation proceedings are commenced against any Real Property; provided, however, that Purchaser may elect to close and accept the Purchased Assets with no reduction in the Purchase Price and, in that event, any insurance proceeds (or proceeds of such condemnation proceeding) subsequently recovered by Seller on account of such loss shall be transferred to Purchaser; or
- (viii) By Purchaser, if any of the conditions to Purchaser's Obligation to Close are not satisfied on or before December 31, 2021.

(c) By Seller:

- (i) By Seller, in the event that a higher or better offer from a Qualified Bidder other than Purchaser is (I) accepted by the Seller in accordance with the Bid Procedures, (II) approved by the Bankruptcy Court and (III) results in the closing of such sale, in which event this Agreement shall be deemed, without further action, to have been automatically terminated by Seller on the date of the approval of such sale by the Bankruptcy Court. In such event, the Deposit shall be returned to Purchaser in accordance with Section 2.5, and the Break-Up Fee shall be paid to the Purchaser in

accordance with Section 5.4; or

- (ii) By Seller, in the event of a material violation or material breach by Purchaser of its agreements, covenants, representations or warranties contained in this Agreement; provided, however, that such violation or breach shall not have been waived or cured within ten (10) days following receipt by Purchaser of written notice of such breach from Seller, and provided, further, that Purchaser is not then in material breach of the Agreement; or
 - (iii) By Seller, if the Bid Procedures Order is not entered by the Bankruptcy Court on or before November 1, 2021, or alternatively, if the Plan of Reorganization is not filed before October 1, 2021
 - (iv) By Seller, if the Sale Order is not entered by the Bankruptcy Court within forty-two (42) days following the Auction Date, or alternatively, if the Confirmation Order is not entered on or before December 15, 2021; or
 - (v) By Seller, if the Closing does not occur on or before January 15, 2021 (or on such other extended date upon which the parties mutually agree).
- (d) Effect of Termination. In the event of termination of this Agreement pursuant to this Section 10.1, written notice thereof shall forthwith be given to the other party, and all further obligations of the parties hereunder shall immediately and without further action terminate, except that the obligations set forth in Sections 5.4 and the last sentence of this Section 10.1(d) shall survive in full force and effect, as shall any other provisions of this Agreement which are specifically designated to survive termination; provided, however, that if this Agreement is terminated by a party because of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies for breach of contract or otherwise, including, without limitation, specific performance and damages relating thereto, shall also survive such termination unimpaired. If this Agreement is terminated as provided in this Agreement each party will redeliver all documents, work papers and other material of any other party relating to the transactions contemplated by this Agreement, whether obtained before or after the execution of this Agreement to the party furnishing the same and shall abide by the terms of any confidentiality agreement relating thereto.

ARTICLE XI

MISCELLANEOUS

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

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

intended to be conveyed.

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

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

If to Seller, addressed to:

William A. Brandt, Jr.
Development Specialists, Inc.
10 South LaSalle St., Suite 3300
Chicago, IL 60603
bbrandt@dsiconsulting.com

with a copy (which shall not constitute notice but shall be required for notice) to:

Markus, Williams, Young & Hunsicker LLC
1775 Sherman Street, Suite 1950
Denver, CO 80203
Attention: Jennifer Salisbury
Facsimile: 303-830-0809
Email: jsalisbury@markuswilliams.com

If to Purchaser, addressed to:

Revolution Railroad Company, LLC
PO Box 202
North Creek NY 12853
Attention: Michael Dupee
Facsimile:
Email: michael@revrail.com

with a copy (which shall not constitute notice but shall be required for notice) to:

Gravel & Shea, P.C.
76 St. Paul Street, P.O. Box 369
Burlington, Vermont 05402-0369
Facsimile: 802-658-1456
Email: cmason@gravelshea.com

All such Notices will (a) if delivered personally to the address as provided in this Section 11.4, be deemed given upon delivery; (b) if delivered by mail in the manner described above to the address as provided in this Section 11.4, be deemed given three Business Days after mailing; (c) if delivered by overnight courier service to the address as provided in this Section 11.4 be deemed given one Business Day after deposit with the courier (in each case regardless of whether such notice, request, or other

communication is received by any other Person to whom a copy of such notice, request, or other communication is to be delivered pursuant to this Section). Any party from time to time may change its address or other information for the purpose of notices to that party by giving notice specifying the change to the other parties.

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

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

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

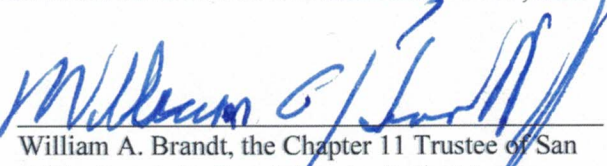
11.8 Continuing Jurisdiction. The parties agree that the Bankruptcy Court shall retain jurisdiction over the enforcement of this Agreement, including the performance of the obligations and transactions contemplated hereunder.

11.9 Choice of Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Colorado and to the extent applicable, the Bankruptcy Code, without regard to conflicts of laws principles that would result in the application of any other law.

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

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

SARATOGA AND NORTH CREEK RAILWAY, LLC

By: 
William A. Brandt, the Chapter 11 Trustee of San
Luis & Rio Grande Railroad, Inc., its Sole Member

REVOLUTION RAIL HOLDING COMPANY, LLC

By: 

Michael Dupee, Duly Authorized Agent

Schedules and Exhibits

Exhibit A	Saratoga Lines
Schedule 2.1(c)	Rolling Stock
Schedule 2.1(d)	Operating Agreements
Schedule 2.1(e)	Assigned Contracts
Schedule 2.1(f)	Assigned Leases
Schedule 2.1(h)	Security Deposits/Prepayments
Schedule 3.5	Real Property

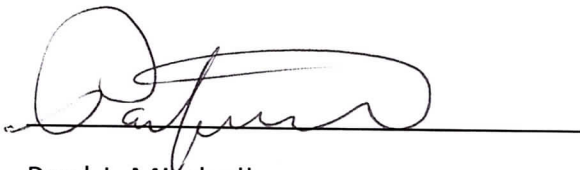
Mitchell Stone Products, LLC

15 Mitchell Ln

Tupper Lake, N.Y. 12986

The undersigned, Paul J. Mitchell, President and Owner of Mitchell Stone Products, submits this statement in support of keeping the Saratoga & North Creek Railway (SNCR) as a viable freight rail service line. I am the owner of a large mining operation at the northern terminus of the SNCR, in the Essex County town of Tahawus, New York.

I am aware there has been an offer made to purchase the SNCR out of bankruptcy and to potentially restore freight rail service on the line. While I cannot make any commitments at this time, if freight rail service is restored, I would evaluate marketing potential using rail transportation to expand my business. For example, a significant market opportunity has been recently presented to me that could only be served by rail. I believe the possibility of such an option would be beneficial to me, to the local community, and to the economic development goals of Essex County, especially in light of the pending infrastructure bill in Washington.

A handwritten signature in black ink, appearing to read 'Paul J. Mitchell', is written over a horizontal line.

Paul J. Mitchell

Mr. Robin DeLoria
Supervisor

Mary Pound
Secretary - Town Clerk

Amanda Lamphear
Admin. Assistant

Cliff Demars
Supt. of Highways

Karen Darrah
Tax Collector

Town of Newcomb

Box 405
Newcomb, NY 12852

"Heart of the Park"



Phone: 518-582-3211

Town Board
David Olbert
Donald Bott
Paul LaCourse
Lana Fennessy

Assessors
Lowell Stringer, Chair
Jennifer Fifield
Edna VanAuken

Robert Ward
Town Justice

September 28, 2021

William A. Brandt, Jr.
Development Specialists, Inc.
110 East 42nd Street
Suite 1818
New York, New York 10017

RE: Saratoga & North Creek Reorganization Plan

Good morning Mr. Brandt,

The Town of Newcomb and the Essex County Board of Supervisor filed a letter on June 8, 2021, in response to the Trustee's April 30, 2021, letter stating that we are opposed to the adverse abandonment application and support the efforts of the Trustee to sell SNCR as an operating rail line. Preserving and promoting continued rail service of Saratoga & North Creek Railroad for the potential use of moving the remaining aggregate from Mitchell Stone Products, Tahawus, New York is supported by the Essex County Board of Supervisors and the Newcomb Town Board.

On July 18, 2019, Paul Mitchell of Mitchell Stone Products filed with the Surface Transportation Board in opposition to the New York State DEC abandonment request, stating that he has "approximately 80 million tons of high friction aggregates at our Tahawus Mine property in Essex County, New York." Mr. Mitchell also stated "all of this product has been already mined and sitting on the ground from a previous mining operation that ran from the 1940s through the 1980s. This product meets DOT specifications for highway paving projects in New York, New Jersey, and Pennsylvania. Our current sales volume of approximately 60,000 tons annually is limited to a 50 - 75-mile radius via our only mode of transportation -- truck."

We support the efforts of the Trustees Reorganization Plan which would allow the Sanford Rail Line railroad to emerge as "a living, not a dying enterprise" which could bring a considerable amount of tax revenue to Essex County, add potential jobs to our remote location and reduce carbon emissions into the atmosphere generated by truck haulage.


Robin T. DeLoria
Supervisor Town of Newcomb


Shaun Gilliland - Chairman
Essex County Board of Supervisors