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April 21, 2022

Surface Transportation Safety Board

Re: GKG Filing on Behalf of Revolution Rail

Good afternoon,

Yesterday on behalf of Revolution Rail I filed a Verified Notice of Exemption with Exhibits. The exhibits were not in the correct order and needed to be updated. Attached is the updated exhibits in the correct order. Nothing has been added or removed. Please remove the old exhibits and use the attached instead. Please feel free to reach out to me with any questions or concerns. I can be reached via email at hholland@gkglaw.com or at (443) 771-7044.

Regards,

Heather L. Holland
GKG Law

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of Revolution Rail Holding Company, LLC, and that the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to be 'RH' with a stylized flourish.

Robert Harte
Manager
Revolution Rail Holding Company, LLC

April 18, 2022

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:	)	
	)	Lead Bankruptcy Case No. 19-18905-TBM
SAN LUIS & RIO GRANDE RAILROAD, INC.	)	
	)	Chapter 11
Debtor.	)	
In re:	)	
	)	
SARATOGA AND NORTH CREEK RAILWAY, LLC,	)	Bankruptcy Case No. 20-12313-TBM
	)	
	)	Chapter 11
Debtor-in-Possession.	)	
	)	

**MOTION TO CONFIRM AND APPROVE HIGHEST AND BEST BID AND SALE IN
CONNECTION WITH AUCTION CONDUCTED PURSUANT TO PLAN OF
LIQUIDATION AND AUTHORIZING RETENTION BY THE PLAN
ADMINISTRATOR OF DEPOSIT**

Saratoga and North Creek Railway, LLC (“Debtor” or “Reorganized Debtor”), by and through William A. Brandt, Jr., the duly appointed plan administrator (the “Plan Administrator”), through his undersigned counsel, hereby submits his Motion to Approve Highest and Best Bid in Connection with the Auction Conducted Pursuant to Plan of Liquidation (the “Motion”) and in support thereof, the Plan Administrator states as follows:

1. On March 30, 2020, the Debtor filed a voluntary bankruptcy petition under Chapter 11 of the Bankruptcy Code.
2. The Debtor filed its Chapter 11 Plan of Liquidation Dated September 30, 2021 (the “Plan”) in the above-captioned chapter 11 proceeding. Pursuant to Section 1125 of the Bankruptcy Code, the Debtor obtained an order of the Bankruptcy Court approving its Disclosure Statement for submission to the holders of claims against the Debtor.
3. On January 13, 2022, the Court entered its Memorandum Opinion and Order Confirming Chapter 11 Plan (the “Confirmation Order”).
4. The Plan contemplated that the Plan Administrator would hold an auction for the sale of the Saratoga Assets (as that term is defined in the Plan) and the anticipated sale was

supported by a Stalking Horse Bid from Revolution Rail Holdings, LLC ("Revolution Rail") of \$700,000.00.

5. The Plan Administrator received two additional Bids from Acceptable Bidders by the Bid Deadline. The Bids were accompanied by requisite deposits of \$35,000.00 to the Plan administrator. The Acceptable Bidders were Sierra North Company ("Sierra") and Doc N Duchess Rails, LLC ("Doc N Duchess") and the additional Bids were in the amount of \$750,000.00.

6. The auction was conducted by the Plan Administrator on March 3, 2022. Revolution Rail, Doc N Duchess and Sierra all participated in the auction. At the start of the auction, the Plan Administrator was comfortable that all bidders had the financial capacity to close on a sale of the Saratoga Assets¹ at a purchase price in the range of \$750,000.00.

7. Sierra's highest bid at the auction was \$2,020,000.00 for the Saratoga Assets.

8. When the bidding reached approximately \$2,800,000.00, the Plan Administrator paused the auction to inform the Bidders that given the fact that the amounts had risen significantly and materially above the original Stalking Horse bid, at the conclusion of the auction, the Plan Administrator would require the Successful Bidder to significantly "upscale" their deposit prior to the closing in order to cover the significantly higher risk to creditors of the Reorganized Debtor if the Successful Bidder did not close. A copy of the transcript from the auction is attached hereto as Exhibit A.

9. The auction ultimately concluded with Doc N Duchess providing the highest bid at \$3,330,000.00 and Revolution Rail providing the next highest bid at \$3,320,000.00. The Plan Administrator then selected Doc N Duchess as the Successful Bidder.

10. On March 11, 2022, the Plan Administrator and Doc N Duchess executed an Asset Purchase Agreement in accordance with the auction whereby Doc N Duchess agreed to purchase the Saratoga Assets for \$3,330,000.00 and to immediately provide the Plan Administrator a larger deposit pending the closing of \$250,000.00. Specifically, Section 2.5 of the Asset Purchase Agreement provided that:

Upon execution of this Agreement, Purchaser shall deliver to Seller's attorney the sum of Two Hundred Fifteen Thousand and 00/100 (\$215,000.00) to cause the total deposit from Purchaser to equal Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "Deposit").

11. On March 15, 2022, the Plan Administrator filed a Report of Auction with the Court attaching a copy of the Asset Purchase Agreement with Doc N Duchess.

12. Notwithstanding the fact that Deposit of \$250,000.00 was due upon execution of the Asset Purchase Agreement, Doc N Duchess did not remit the funds to the Plan Administrator.

¹ Terms not otherwise defined herein shall have the definitions provided in the Plan.

On March 21, 2022, counsel for the Plan Administrator demanded that Doc N Duchess remit the Deposit immediately or the risk termination of the agreement.

13. In response, Doc N Duchess requested that it be granted an extension of time until April 1, 2022 to remit the Deposit to the Plan Administrator. The Plan Administrator agreed to extend the deadline provided, however, Doc N Duchess agreed to increase the amount of the Deposit to \$500,000.00 and provided the Plan Administrator with sufficient documentation as to their ability to close on the sale. Doc N Duchess agreed.

14. The Plan Administrator did not receive the Deposit on April 1, 2022, and, therefore, on April 4, 2022, the next business day, the Plan Administrator terminated the Asset Purchase Agreement with Doc N Duchess. In addition, notwithstanding the fact that the auction concluded on March 3, 2022, and the Doc N Duchess Asset Purchase Agreement was not terminated until April 4, 2022, Doc N Duchess have not and did not file the requisite paperwork with the Surface Transportation Board requesting regulatory approval of their purchase and assumption of Saratoga and North Creek Railway's common carrier status.

15. Pursuant to the terms of the Doc N Duchess Asset Purchase Agreement, Doc N Duchess's failure to abide by the terms of the Doc N Duchess Asset Purchase Agreement constitutes cause for the estate to retain their \$35,000.00 Deposit in partial compensation for the time and expense their default has cost the Reorganized Debtor.

16. On April 4, 2022, the Plan Administrator notified Revolution Rail that pursuant to the terms of the Plan, it was now the Successful Bidder at the auction. Revolution Rail has conveyed to the Plan Administrator that if Doc N Duchess were unable to meet the higher standards set forth by the Plan Administrator at the auction, Doc N Duchess should not have continued bidding, and that Revolution Rail was, in reality, bidding against itself.

17. Revolution Rail and the Plan Administrator have agreed to the attached First Amendment to the Revolution Rail Asset Purchase Agreement (the "First Amendment") that was attached to the Plan as an exhibit and served as the Stalking Horse bid. The First Amendment has the following provisions:

- Revolution Rail shall purchase the Saratoga Assets for a purchase price of \$2,735,000.00 representing \$2,700,000.00 in cash and a credit of \$35,000.00 for the Break-Up Fee.
- Revolution Rail shall deliver to Seller's attorney the sum of Four Hundred Seven Hundred Five Thousand dollars and 00/100 cents (\$475,000.00) to cause the total deposit from Purchaser to equal Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "Deposit"). The Deposit shall be remitted three days from execution of the First Amendment but no event any later than April 13, 2022 at 5:00 p.m. MDT.
- Revolution Rail shall file the requisite paperwork with the Surface Transportation Board requesting regulatory approval of its purchase and

assumption of Saratoga and North Creek Railway's common carrier status no later than April 15, 2022.

- Revolution Rail and the Plan Administrator shall close upon the sale of the Saratoga Assets the later of (i) May 27, 2022 or (ii) such other date agreed upon by Revolution Rail and the Plan Administrator.

18. In the Disclosure Statement, the Debtor estimated that the payout from the Plan to general unsecured creditors would equal 5% to 7% of their claims. Under the terms of the First Amendment, using same assumptions in the Disclosure Statement, the general unsecured creditors would receive approximately 32% to 46% on their claims. However, based upon the Plan Administrator's updated review of the claims register, if the Court approves this Motion and the sale to Revolution Rail of the Saratoga Assets closes under the terms of the First Amendment, the general unsecured creditors *may* receive a full or close to full recovery upon their claims.

19. In the Plan Administrator's business judgment, approval of Revolution Rail's bid for the Saratoga Assets as set forth in the Revolution Rail Asset Purchase Agreement as Amended is in the best interests of the estate. The bid contains additional protections to the estate if Revolution Rail is unable close. This contingency is more likely given the fact that the bid is approximately *four times* the amount of the initial Stalking Horse Bid. The acceptance of the bid represents the quickest and most efficient method of providing value to the creditors.

20. The Plan Administrator's other option is to reschedule the auction and start anew. Given the fact that the Sierra's last bid for the assets was \$2,020,000.00 and given the fact that Doc N Duchess would most likely not be considered Qualified Bidders at such an auction, it is unlikely that a second auction would result in a purchase price that equals or exceeds \$2,735,000.00. Additionally, a second auction would result in delay of least another two to three months before any funds could be distributed to creditors as well as increase the administrative costs to be borne by the estate.

21. The Plan Administrator thus requests that the Court approve the Revolution Rail bid as set forth in the Revolution Rail Asset Purchase Agreement as amended as the highest and best bid for the Saratoga Assets. The Plan Administrator also requests the Court authorize him to retain the Doc N Duchess deposit of \$35,000.00 on behalf of the Reorganized Debtor as partial compensation for the delay and costs caused by their default.²

WHEREFORE, the Plan Administrator respectfully requests entry of an Order, a proposed form of which is filed with this Motion: (i) approving Revolution Rail's bid as set forth in the Revolution Rail Asset Purchase Agreement as amended as the highest and best bid from the auction; (ii) approving the sale of the Saratoga Assets to Revolution Rail; (iii) authorizing the Plan Administrator to retain the Doc N Duchess deposit of \$35,000.00 for the benefit of the Reorganized

² The Plan Administrator specifically reserves his right to file a breach of contract action against Doc N Duchess Rail asserting damages on the estate's behalf.

Debtor; and (iv) entering such other and further relief as the Court deems necessary and appropriate.

Dated: April 11, 2022

Respectfully submitted,

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

By: /s/ Jennifer M. Salisbury

Jennifer M. Salisbury, #37168
1775 Sherman Street, Suite 1950
Denver, Colorado 80203-4505
Telephone (303) 830-0800
Facsimile (303) 830-0809
Email: jsalisbury@markuswilliams.com

Counsel for the Reorganized Debtor

CERTIFICATE OF SERVICE

The undersigned certifies that on April 11th, 2022, true and correct copies of the **MOTION TO CONFIRM AND APPROVE HIGHEST AND BEST BID AND SALE IN CONNECTION WITH AUCTION CONDUCTED PURSUANT TO PLAN OF LIQUIDATION AND AUTHORIZING RETENTION BY THE PLAN ADMINISTRATOR OF DEPOSIT**, exhibits and proposed order were filed and served as indicated below on the following:

Via CM/ECF

Ronald S Beacher
rbeacher@pryorcashman.com

Alan K. Motes
Alan.Motes@usdoj.gov

Kyler Burgi
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Christopher L. Richardson
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Adam L. Hirsch
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Scott Neil Schreiber
sschreiber@clarkhill.com

Via U.S. Mail

William A. Brandt, Jr.
Markus Williams Young & Hunsicker LLC
1775 Sherman Street
Suite 1950
Denver, CO 80203

Robin Deloria
Town of Newcomb
PO Box 405
5639 State Route 28N
Newcomb, NY 12852

Dated: April 11, 2022

/s/ Jessica Anderson
Markus Williams Young & Hunsicker LLC
1775 Sherman Street, Suite 1950
Denver, CO 80203
Telephone: 303-830-0800

EXHIBIT B

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This First Amendment to Asset Purchase Agreement (this “**Amendment**”) is made and entered into as of April 8, 2022, by and between Saratoga and North Creek Railway, LLC, (“**Seller**”) and Revolution Rail Holding Company, LLC (“**Purchaser**”)

RECITALS

A. On August 26, 2021, Seller and Buyer entered into an Asset Purchase Agreement (the “**Asset Purchase Agreement**”).

B. The parties wish to make certain amendments to the Asset Purchase Agreement pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, Seller and Buyer agree as follows:

1. Defined Terms. Capitalized terms used in this Amendment which are defined in the Asset Purchase Agreement shall have the same meanings as defined therein, unless otherwise defined herein.

2. Amendments to Asset Purchase Agreement.

a. Section 2.5(a) is hereby amended and replaced in its entirety as follows:

Within three (3) business days of execution of this Amendment or April 13, 2022, whichever is earlier, Purchaser shall deliver to Seller’s attorney the sum of Four Hundred Seven Hundred Five Thousand dollars and 00/100 cents (\$475,000.00) to cause the total deposit from Purchaser to equal Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (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 Seller’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 Seller’s attorney in accordance with Vermont state law pertaining to client trust accounts.

b. Section 2.6 is hereby amended and replaced in its entirety as follows:

“Purchase Price. The purchase price for the Purchased Assets (the “Purchase Price”) is Two Million Seven Hundred Thirty-Five Thousand and 00/100 Dollars (\$2,735,000.00), consisting of \$2,700,000.00 in cash plus credit for the Break-Up

Fee, 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."

- c. Section 2.7 is hereby amended and replaced in its entirety as follows:

"Closing. The closing (the "Closing") shall occur (i) no later than May 27, 2022; or (ii) on such other date as may be mutually agreed by the parties. At Closing, Purchaser shall pay the cash portion of the Purchase Price, less the Deposit, to Seller by bank check or wire transfer of immediate funds."

- d. Section 9.3 is hereby amended and replaced in its entirety as follows:

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; provided, however, Purchaser shall file the requisite paperwork with the Surface Transportation Board requesting authorization of its purchase of the Saratoga Assets no later than April 15, 2022. 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.

3. No Other Changes. Except as explicitly amended by this Amendment, all of the terms and conditions of the Asset Purchase Agreement shall remain in full force and effect.

4. Conditions Precedent. This Amendment shall be effective when Buyer and Seller shall have received an executed original hereof.

5. References. All references in the Asset Purchase Agreement to "this Agreement" shall be deemed to refer to the Asset Purchase Agreement as amended hereby.

6. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Amendment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. Any party's failure to provide an original signature shall not affect the validity, enforceability, and binding effect of this Amendment.

The parties hereto have caused this First Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

REVOLUTION RAIL HOLDING
COMPANY, LLC

By: 
Robert Harte
Duly Authorized Agent

SARATOGA AND NORTH CREEK
RAILWAY, LLC

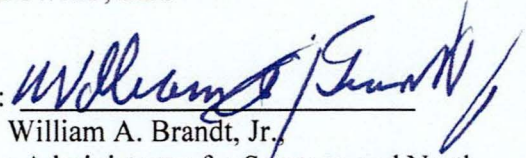
By: _____
William A. Brandt, Jr.,
Plan Administrator for Saratoga and North
Creek Railway, LLC

The parties hereto have caused this First Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

REVOLUTION RAIL HOLDING
COMPANY, LLC

SARATOGA AND NORTH CREEK
RAILWAY, LLC

By: _____
Robert Harte
Duly Authorized Agent

By: 
William A. Brandt, Jr.
Plan Administrator 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.

44 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.

45 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.

46 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.

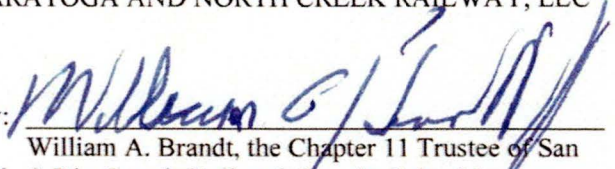
11.8 Continuing Jurisdiction. The parties agree that the Bankruptcy Court shall retain jurisdiction over the enforcement of this Agreement, including the performance of the obligations and transactions contemplated hereunder.

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

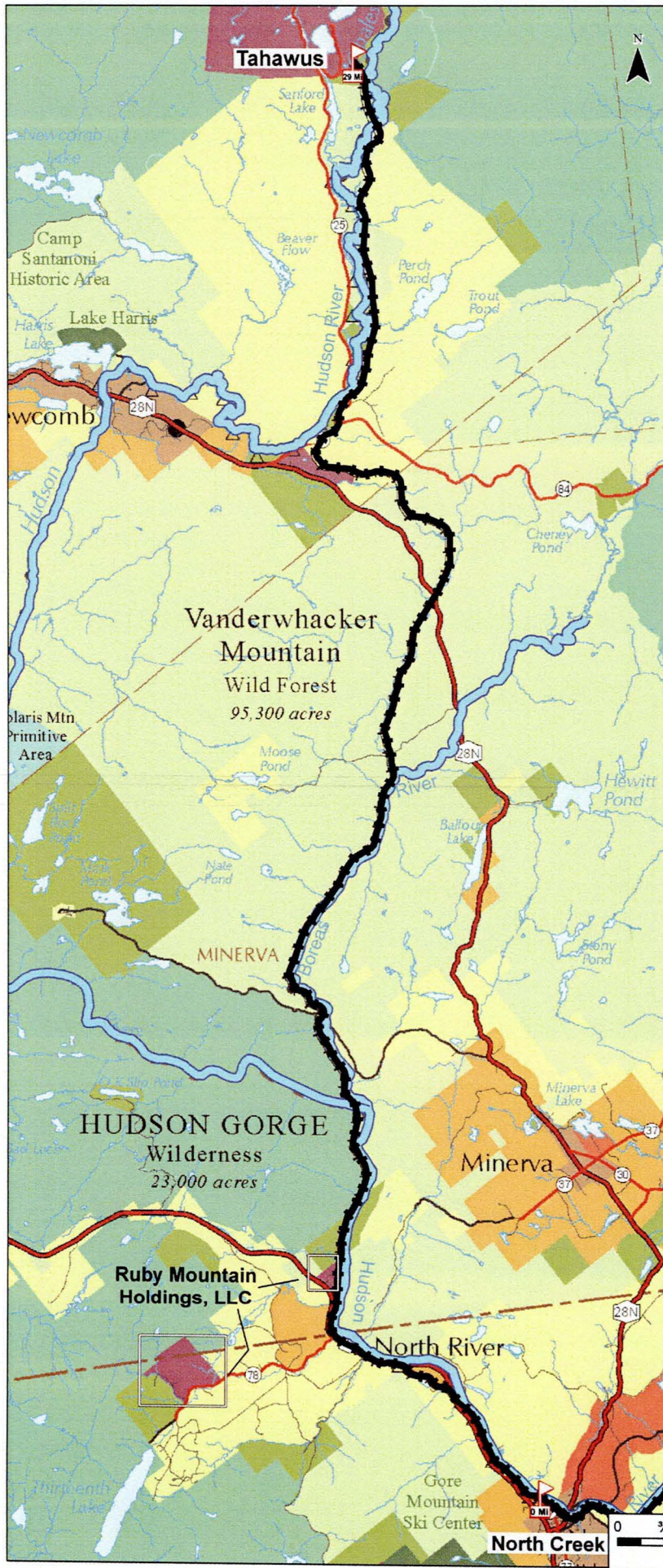
By: 

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

EXHIBIT C



Tahawus Branch Railroad Corridor

Key

Wild, Scenic, and Recreational Rivers

Source: DEC

Railroad

Source: DEC, Bureau of Real Property



Mile Posts

Source: DEC, Bureau of Real Property

Private Land Classification

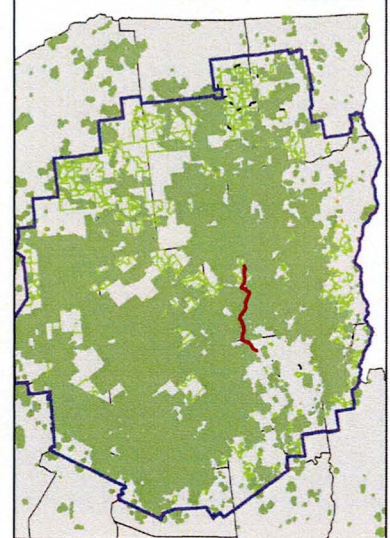
- Hamlet
- Moderate Intensity Use
- Low Intensity Use
- Rural Use
- Resource Management
- Industrial Use

State Land Classification

- Wilderness
- Primitive
- Wild Forest
- Intensive Use
- State Administrative

Source: Adirondack Park Agency, 2018 Land Use and Development Plan Map

Tahawus Branch Railroad Corridor



Department of Environmental Conservation

This map was compiled from publicly available GIS data and real property land records. Created by the Division of Lands and Forest, Bureau of Real Property. Compiled on Date: 5/24/2018

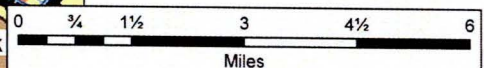


EXHIBIT D

CERTIFICATION

I, Robert Harte, as Manager of Revolution Rail Holdings Company, LLC hereby certify that the Revolution Rail Holdings Company, LLC's projected annual rail revenues resulting from the consummation of the proposed transaction will not exceed \$5 million annually, and will not result in Revolution Rail Holdings Company, LLC becoming a Class I or Class II carrier under the provisions of 49 C.F.R. § 1201(1-1).

A handwritten signature in black ink, appearing to be 'R Harte', with a long horizontal stroke extending to the left.

Robert Harte
Manager
Revolution Rail Holding Company, LLC

April 18, 2022

EXHIBIT E

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD

REVOLUTION RAIL HOLDING COMPANY, LLC
--ACQUISITION EXEMPTION --
SARATOGA AND NORTH CREEK RAILWAY, LLC

Revolution Rail Holding Company, LLC ("RRHC"), a non-carrier entity, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31, *et seq.*, to acquire from the Saratoga and North Creek Railway, LLC ("SNCR") approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine ("Line").

RRHC will also acquire all other railroad operating assets from the SNCR, including 2.97 miles, more or less, of passing tracks and siding and any structures, tracks, ties, bridges and culverts, telephone and telegraph lines that may be located on the Line.

RRHC expects to consummate its acquisition of the assets of SNCR shortly after the expiration of 30 days from the date of the filing of this Verified Notice of Exemption. As SNCR is presently an asset in a bankruptcy proceeding under Chapter 11 of Title 11 of the United States

Code, filed as Case No. 20-12313-TBM in the United States Bankruptcy Court for the District of Colorado, the consummation is subject to the Bankruptcy Court procedures.

Comments must be filed with the Surface Transportation Board and served on:

Daniel Elliott
GKG Law, P.C.
1055 Thomas Jefferson Street, N.W.
Suite 500
Washington, DC 20007
(703) 863-9670

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: April __, 2022

By the Board