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BY E-Filing

Ms. Cynthia T. Brown
Chief of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

RE: FD 36084, West Branch Intermediate Holdings, LLC, and Continental Rail LLC –Acquisition of Control Exemption – Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., Wyoming And Colorado Railroad Company, Inc.

Dear Ms. Brown:

On behalf of applicants West Branch Intermediate Holdings, LLC, and Continental Rail LLC, I am filing in the above-captioned proceeding a redacted version of the Letter of Intent pertaining to Applicants' acquisition of the three rail companies identified above that are currently owned by David L. Durbano. Applicants will submit confidential and redacted versions of the Purchase and Sale Agreement once that document is finalized and executed.

Please contact me if you have any questions.

Sincerely yours,



John D. Heffner

Enclosure

cc: William Mullins, Esq.
Scott Zimmerman, Esq.

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WEST BRANCH

♦ RAIL GROUP ♦

July 6th, 2016

Private & Confidential

Managing Director

[REDACTED]

We are pleased to submit the following non-binding letter of intent for the assets (collectively the "Business" or the "Properties") of The Western Group LLC, Snowy Range Cattle Co. Inc., Wyoming Colorado Railroad Inc.¹, Southwestern Rail Car Services LLC, Verde Canyon Railroad LLC, Clarkdale Arizona Central Railroad LLC, Southwestern Railroad Inc.², Cimarron Valley Railroad LLC and The Western Railroad Builders Inc. (collectively the "Company") pursuant to which an affiliate controlled by West Branch Holdings Intermediate, LLC ("West Branch" or the "Buyer") would acquire substantially all of the Properties (the "Transaction"). Based on our review of the materials provided to date, we believe West Branch Holdings, a portfolio company of [REDACTED], is an excellent strategic and financial partner to steward these properties through their next phase of growth.

[REDACTED] a private equity investment firm based [REDACTED] with over \$15 billion in committed capital from leading educational [REDACTED]

[REDACTED]

[REDACTED]

By way of background, West Branch Holdings was formed by [REDACTED] in 2015 with a mandate to acquire and grow short line rail and rail-related assets. In June of 2015, West Branch successfully acquired the Monroe, LA-based Delta Southern Railroad, where it has committed over \$1M to infrastructure upgrades to support the growth of the business and has begun to expand the line's scope of services. West Branch Holdings is led by a deeply experienced management team from Continental Railways ("Continental"). Continental was formed by John Marino Sr. and John Marino Jr., who were joined by several veterans of the short line industry.

[REDACTED]

The following outlines the significant terms of our non-binding proposal to acquire the Business:

¹ Exclusive of the assets of Duraco, LLC.

² Exclusive of the assets relating to the Carlsbad Division.

Key Terms of the Proposed Transaction

- 1) **Purchase Price.** Relying on the confidential materials provided by your team to date, we are pleased to propose a purchase price [REDACTED] in cash for the Business comprised of [REDACTED] cash at closing and [REDACTED] paid over ten years on an annual basis assuming continuation of the 45G tax credits. This valuation relies on the following assumptions:
 - a) The Business continues to perform at least in-line with the forecast provided
 - b) The Business will be delivered with substantially all assets of the Company excluding the assets of Duraco, LLC, any assets related solely to the operation of the Carlsbad Division and any other assets excluded in subsequent discussions
 - c) The Business will be delivered with a normalized level of working capital
 - d) Buyer assumes only limited, specified liabilities of the Business and specifically does not assume any liabilities in respect of pre-closing claims or litigation
 - e) Execution of a modified contract with [REDACTED] containing substantially similar terms to the existing contract but including a multi-year contract term and minimum volume commitments
- 2) **Financing.** We anticipate funding the Transaction with a combination of cash equity invested by [REDACTED] and debt from third-party lenders. The equity needed to complete the Transaction would be drawn from the [REDACTED] in capital currently managed by [REDACTED]. We have extensive experience raising third-party debt financing for transactions of this type and are confident in our ability to raise term loan financing consistent with the timeline described below. Our experience in similar transactions in the past, we can provide a high level of confidence that our proposed transaction will close.
- 3) **Key Diligence Items.** As you are aware [REDACTED] West Branch Holdings, and our partners at Continental Railways have significant experience with transactions of this nature and the railroad space generally. Given this expertise, we are highly confident that we can work towards the signing of definitive documentation in an expedited manner. Our key due diligence activities would include the following: (i) completion of business and financial due diligence, including a review of the historical and projected financial performance of the business, tours of key facilities, and interviews with customers; (ii) confirmatory accounting due diligence (iii) confirmatory legal due diligence by Continental [REDACTED] counsel and a firm they may designate; (iv) receipt of all necessary and material governmental and third party approvals required to consummate the Transaction (if any); and (v) negotiation of a mutually satisfactory definitive asset purchase agreement and other related documents. In addition, due to the critical nature of the [REDACTED] contract, a first order of business in our due diligence activities would be a meeting with the relevant individuals at [REDACTED] discuss the contract modifications referenced in section 1(e).
- 4) **Conditions and Approvals.** As you are aware the Continental senior management team has spent considerable time and effort on this Transaction, including briefing the Board of Directors of West Branch, and, as a privately held investment partnership, [REDACTED] does not require any corporate or shareholder approvals or other extraordinary conditions to consummate the Transaction. However, entry into a definitive agreement is subject to the final approval of West Branch's Board of Directors, and closing is subject to entering into mutually satisfactory definitive agreements with respect to the proposed transaction, which we would expect to include customary terms and conditions, including, but not limited to, governmental and third-party approvals.
- 5) **Access to Information.** The Company will afford, and will cause its affiliates and their respective officers, employees, agents and representatives to afford, to Continental and [REDACTED]

and their representatives, consultants, agents, lenders and investors reasonable access to the properties, business, personnel (including outside accountants and lawyers), and financial, legal, accounting, tax and other data and information relating to the Business or the Transaction as requested by Continental or [REDACTED] or their representatives or agents.

- 6) **Fees and Expenses.** Except as may be provided in a definitive asset purchase agreement, the Company and its affiliates, on the one hand, and [REDACTED] on the other hand, will pay their own respective fees and expenses (including the fees and expenses of legal counsel, brokers or other representatives or consultants) in connection with the transactions contemplated hereby.
- 7) **Exclusive Dealing.** In order to facilitate our efforts to pursue the Transaction, to incur the costs and expenses to complete the Transaction, and to successfully complete our diligence in an expedited manner (which will require that we have the management teams' full attention), from and after the date that the Company accepts and agrees to this letter of intent until the date that is the later of (a) sixty (60) days after receiving a countersigned copy of this letter of intent and (b) 11:59 p.m. Central time on the second (2nd) business day following the date on which the Company provides written notice to West Branch terminating the exclusivity arrangement under this Section 8 (the "Exclusivity Period"), the Company agrees that it will not (and will cause its affiliates, subsidiaries, stockholders and their respective directors, officers, agents and representatives and any other person acting on behalf of the Company not to), directly or indirectly: (i) solicit offers, inquiries or proposals for, negotiate or actively discuss any offer, inquiry or proposal to enter into, any business combination or merger, an issuance or sale of debt or equity of the Company or any of its subsidiaries (other than issuances of equity to employees of the Company or its subsidiaries pursuant to existing rights to acquire such equity), a sale of a significant portion of the assets of the Company or any of its subsidiaries (other than sales of inventory in the ordinary course), or a transaction comparable to or similar to the Transaction (any of the foregoing, a "Competing Transaction"), (ii) provide any new information to, or allow continued data room access for, any other person regarding the Company or any of its subsidiaries (except in the ordinary course of business consistent with past practice), or (iii) enter into any agreement, arrangement or understanding regarding any Competing Transaction. The Company represents that, from and after the date hereof, neither it nor any of its affiliates will, by pursuing the Transaction contemplated hereby, violate the terms of any other agreement or obligation to which it or any such affiliate is subject. The term "person" as used in this letter of intent will be broadly interpreted to include any individual, corporation, partnership, company, group or other entity.
- 8) **Confidentiality.** Unless mutually agreed to in writing, no party to this letter of intent will make any disclosure to any third party (other than their respective officers, directors, employees, agents, potential financing sources and other representatives who have a need to know such information in furtherance of the transactions contemplated hereby) of the existence or contents of this letter of intent, the transactions contemplated hereby or the status of negotiations with respect thereto.
- 9) **Key Contacts.** Should you have any questions regarding our proposal, please feel free to contact [REDACTED]
- 10) **Miscellaneous.** This offer will remain in effect through 5:00 p.m. Central time on July 8, 2016. This Letter of intent will be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law that would apply the laws of another jurisdiction. In the event of your acceptance of this offer, as indicated by your signature hereon, Sections 5 through 8 of this letter of intent and this Section 10 will become a binding agreement between the parties; the remaining provisions of this letter of intent constitute a non-binding expression of interest and are not intended, and shall not be construed, to constitute a binding

obligation of the Sellers, [REDACTED] West Branch Holdings Intermediate LLC, or any of their respective affiliates. Except as expressly stated, no such person will have obligation of any kind whatsoever by virtue of this letter of intent or any other written or oral expression by any party hereto or their respective representatives, subsidiaries and affiliates unless and until a definitive agreement relating thereto among the applicable parties is executed and delivered. No prior or subsequent course of conduct or dealing among the parties, oral communications or other actions not reduced to or reflected in writing executed by all of the parties shall serve to modify this paragraph in any way or cause the provisions of this proposal to become in any sense legally binding or enforceable.

* * * * *

We thank you for the opportunity to present this proposal. We are enthusiastic about this opportunity and are prepared to dedicate the necessary resources to quickly complete the proposed Transaction. Should you have any questions regarding our proposal, please do not hesitate to give us a call as we would very much appreciate the opportunity to discuss our proposal in more detail.

Sincerely,

West Branch Holdings, LLC

[REDACTED]
[REDACTED]

ACCEPTED AND AGREED

as of _____, 2016:

THE WESTERN GROUP, LLC ("SELLER")

By: _____
Name: _____
Title: _____