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July 22, 2015  
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July 22, 2015

**VIA HAND DELIVERY**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024



**Re: STB Finance Docket No. FD 35945, Regional Rail Holdings, LLC – Acquisition of Control Exemption – Regional Rail, LLC**

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Verified Notice of Exemption (“Notice”) under 49 C.F.R. § 1180.2(d)(2) being filed on behalf of Regional Rail Holdings, LLC. Also enclosed is a check in the amount of \$1,300 representing the filing fee for this Notice.

As indicated herein, an unredacted version of Exhibit C to the Notice (which contains commercially-sensitive information) is being filed under seal pursuant to a concurrently-filed motion for a protective order.

Please time stamp the extra copy of the Notice provided herewith to indicate receipt, and return it to me in the stamped, self-addressed envelope provided for your convenience.

If you have any questions please feel free to contact me. Thank you for your assistance in this matter.

Sincerely,

*Mary Anne Mason*  
Mary Anne Mason

Enclosures

FEE RECEIVED  
June 22, 2015  
SURFACE  
TRANSPORTATION BOARD

FILED  
June 22, 2015  
SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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STB DOCKET NO. FD 35945

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REGIONAL RAIL HOLDINGS

– ACQUISITION OF CONTROL EXEMPTION –

EAST PENN RAILROAD, LLC, MIDDLETOWN & NEW JERSEY  
RAILROAD, LLC AND TYBURN RAILROAD LLC

---

**VERIFIED NOTICE OF EXEMPTION  
EXPEDITED HANDLING REQUESTED**

**Pursuant to 49 C.F.R. § 1180.2(d)(2)**

---

Mary Anne Mason  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 624-2572

Counsel for Petitioner

Dated: July 22, 2015

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. FD 35945**

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**REGIONAL RAIL HOLDINGS**

**– ACQUISITION OF CONTROL EXEMPTION –**

**EAST PENN RAILROAD, LLC, MIDDLETOWN & NEW JERSEY RAILROAD,  
LLC AND TYBURN RAILROAD LLC**

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**VERIFIED NOTICE OF EXEMPTION**

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**I. INTRODUCTION**

Pursuant to 49 C.F.R. § 1180.2(d)(2) and the regulations of the Surface Transportation Board (“STB” or “Board”) at 49 C.F.R. §§ 1180.6(a)(1)(i) – (iii), 1180.6(a)(5) – (6), and 1180.6(a)(7)(ii), Regional Rail Holdings, LLC (“Regional Holdings”), a non-carrier, submits this notice for an exemption from the prior review and approval requirements of 49 U.S.C. § 11323(a)(4) for Regional Holdings to acquire control of Regional Rail, LLC (“Regional Rail”), a holding company for three Class III rail carriers, East Penn Railroad, LLC (“ESPN”), Middletown & New Jersey Railroad, LLC (“MNJ”), and Tyburn Railroad LLC (“Tyburn”). As demonstrated below, exemption of the proposed transaction clearly is warranted under the relevant standards of 49 C.F.R. § 1180.2(d)(2).

Regional Holdings seeks expedited consideration of this Notice so that its acquisition of Regional Rail will allow Regional Holdings to minimize potential disruption to the business as a result of the change in majority ownership.

A map showing the rail lines of ESPN, MNJ, and Tyburn is attached hereto as Exhibit A. In support of this Notice for Exemption, Regional Holdings submits the following:

## **II. JURISDICTION AND STATUTORY STANDARDS**

The acquisition of control of two or more rail carriers by a person that is not a rail carrier requires prior approval by the Board pursuant to 49 U.S.C. § 11323(a)(4). Pursuant to 49 U.S.C. § 11324(d), because Regional Holdings' proposed control of Regional Rail does not involve two or more Class I railroads, the Board must approve the transaction unless: 1) the transaction is likely to result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the U.S.; and 2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. However, Regional Holdings' acquisition of Regional Rail qualifies for exemption from regulation and prior approval requirements pursuant to relevant provisions within STB regulations.

### **A. 49 C.F.R. § 1180.2(d)(2)**

Transactions such as this one that are proposed under 49 U.S.C. § 11323 and qualify for an exemption under 49 C.F.R. § 1180.2(d) do not necessitate prior Board review and approval. Specifically, § 1180.2(d)(2) exempts the acquisition of non-connecting carries where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the acquisition is not part of a series of

anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I carrier.

**III. THE TRANSACTION QUALIFIES FOR AN EXEMPTION FROM PRIOR BOARD APPROVAL UNDER 49 U.S.C. § 1180.2(d)(2)**

Regional Holdings' acquisition qualifies for an exemption under 49 C.F.R. § 1180.2(d)(2). None of the Class III railroads owned by Regional Rail connect with each other. Once the proposed acquisition is consummated, no railroads in the corporate family will connect with each other. Nor are there plans to connect any of the railroads in the post-transaction corporate family. Lastly, the proposed acquisition does not involve any Class I carriers.

In order to claim the 49 C.F.R. § 1180.2(d)(2) exemption, § 1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in §§ 1180.6(a)(1)(i) – (iii), 1180.6(a)(5) – (6), and 1180.6(a)(7)(ii) of those rules. The requested information is provided as follows:

**A. Name and Contact Information of Applicants/Name and Contact Information of Counsel to whom Questions Regarding the Transaction can be Addressed Summary of Proposed Transaction: (49 C.F.R. § 1180.6(a)(1)(i))**

Petitioner Regional Holdings, a newly-formed investment entity managed by Levine Leichtman Capital Partners, Inc. ("LLCP"), was formed in July 2015 for the purpose of acquiring Regional Rail. LLCP is an independent investment firm that invests in middle market companies located in the United States and Europe. It

has managed approximately \$7.0 billion of institutional capital since its inception on behalf of itself and its worldwide network of investors.

The complete name and address of petitioner Regional Holdings is:

Regional Rail Holdings, LLC  
c/o Levine Leichtman Capital Partners, Inc.  
335 North Maple Drive, Suite 130  
Beverly Hills, California 90210  
Attention: David I. Wolmer  
Email: [dwolmer@llcp.com](mailto:dwolmer@llcp.com)

Regional Rail is a non-carrier that currently controls ESPN, MNJ, and Tyburn through stock ownership. Regional Rail owns and operates rail lines in the Mid-Atlantic, namely Southeastern Pennsylvania, Delaware, and Orange County, New York. Regional Rail obtained authority to acquire and operate the aforementioned lines pursuant to the filing of notices of exemption.

ESPN is a Class III rail carrier which owns and/or operates approximately 114 route miles of rail line in Southeastern Pennsylvania and Delaware. ESPN is a wholly-owned subsidiary of Regional Rail; it was acquired by Regional Rail in 2007. ESPN serves over 60 customers in a wide array of markets, including petrochemicals, steel/metals, and forest products.

MNJ is a Class III rail carrier which owns and/or operates 43 miles of track in Orange County, NY. MNJ is a wholly-owned subsidiary of Regional Rail; it was acquired as a financially distressed company in 2009. Regional Rail successfully expanded operations by rehabilitating industrial sites along MNJ's line and leasing track from Norfolk Southern Railway Co. ("NSR"). See, Middletown & New Jersey Railroad, LLC – Lease and Operation Exemption – Norfolk Southern Railway Co.,

Finance Docket No. 35506 (Service Date – July 25, 2013). Regional Holdings aims to continue this trend and will support the growing business opportunities in its service area.

Tyburn is a Class III rail carrier which owns 0.5 miles of track in Morrisville, PA. Tyburn is a wholly-owned subsidiary of Regional Rail; it was acquired in 2011. It has over 20 customers and provides rail-to-truck transload services.

Questions and correspondence concerning this Notice should be sent to the representative of Regional Holdings at the following address:

Mary Anne Mason  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Email: [mamason@crowell.com](mailto:mamason@crowell.com)

Pursuant to a Securities Purchase Agreement to be executed by Regional Rail, FC Crestone 07 Corp., John Brunner, Kemp Buettner, Kevin Lamb, Robert C. Parker, and Al Sauer (“Sellers”) and Regional Holdings, Regional Holdings proposes to acquire control of Regional Rail through the purchase of 100% equity interests in Regional Rail from the Sellers in exchange for cash and a less than 15% equity interest in Regional Holdings. All of the Sellers, except for FC Crestone 07 Corporation (“FCC”), will retain equity in Regional Holdings post-transaction. No future shipper will lose rail service or any existing interchange options as a result of the proposed transaction. Sellers strongly support the proposed transaction. See Exhibit B.

**B. Schedule for Consummation: (49 C.F.R. § 1180.6(a)(1)(ii))**

Regional Holdings intends to consummate this transaction on or shortly after the effective date of this notice of exemption.

**C. Purpose to be Accomplished by the Transaction: (49 C.F.R. § 1180.6(a)(1)(iii))**

The purpose of this transaction is for Regional Holdings to monetize the equity stake in Regional Rail held by FCC, a private equity fund based out of Colorado. Regional Holdings plans to work closely with the various state governments, the local community, and the connecting carriers to maintain high levels of service and to ensure continued quality of the infrastructure.

**D. State(s) in which the property of each carrier is situated: (49 C.F.R. § 1180.6(a)(5))**

Delaware	ESPN
Pennsylvania	ESPN, Tyburn
New York	MNJ

**E. Map: (49 C.F.R. § 1180.6(a)(6))**

Exhibit A to this Notice contains maps that show, in color, the location of ESPN, MNJ, and Tyburn. As required by § 1180.6(a)(6), twenty unbound copies of these maps are also submitted with this Notice.

**F. Copy of Purchase Agreement: (49 C.F.R. § 1180.6(a)(7)(ii))**

The redacted version of the Securities Purchase Agreement is attached hereto as Exhibit C. Unredacted copies of the Securities Purchase Agreement are being submitted under seal pursuant to the accompanying Motion for Protective Order.

**IV. ENVIRONMENTAL & HISTORICAL REPORTS**

This transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. In addition, this transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. The thresholds of 49 C.F.R. § 1105.7(e)(4) or (5) will not be exceeded.

The transaction is also exempt from the historic reporting requirements because transactions involving “common control through stock ownership or similar action” are exempt from the historic report requirements of 49 C.F.R. § 1105.8(a) if the transaction “will not substantially change the level of maintenance of railroad property.” See 49 C.F.R. 1105.8(b)(3). A historic report is not required in this

transaction because no such changes are anticipated with respect to the controlled railroads.

## **V. LABOR PROTECTIONS**

Each of ESPN, MNJ, and Tyburn is a Class III rail carrier. Accordingly, labor protective conditions are not statutorily applicable. See 49 U.S.C. § 11326(c).

## **VI. EXPEDITED TREATMENT**

Regional Holdings respectfully requests expedited consideration of this Notice. Regional Holdings has committed to Sellers to close on the purchase of Regional Rail as quickly as possible. More importantly, expedited consideration will minimize potential disruption to the business as a result of the change in majority ownership. There are no current shippers of Regional Rail who will be impacted by the transaction. As such, expedited consideration of this transaction will not have any adverse impact on any possible party in interest and allow the parties to complete the sale of Regional Rail quickly.

Sellers, the current owners of Regional Rail, strongly support both approval of the proposed transaction and the request for expedited consideration.

WHEREFORE, Regional Holdings respectfully requests that the Board grant an exemption from the prior approval provisions of 49 U.S.C. §§ 11323-25 for Regional Holdings' acquisition of control of Regional Rail through an equity purchase, and allow such exemption to become effective in an expedited fashion.

Respectfully submitted,

  
Mary Anne Mason

Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 624-2572

Counsel for Petitioner

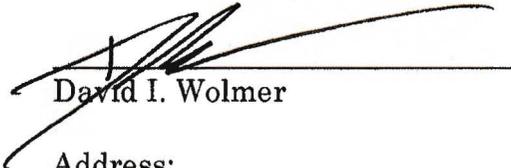
Dated: July 22, 2015

VERIFICATION

STATE OF CALIFORNIA )

CITY OF BEVERLY HILLS/COUNTY OF LOS ANGELES )

I, David I. Wolmer, being duly sworn depose and state that I am President, Assistant Treasurer and Assistant Secretary of Regional Rail Holdings, LLC, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

  
David I. Wolmer

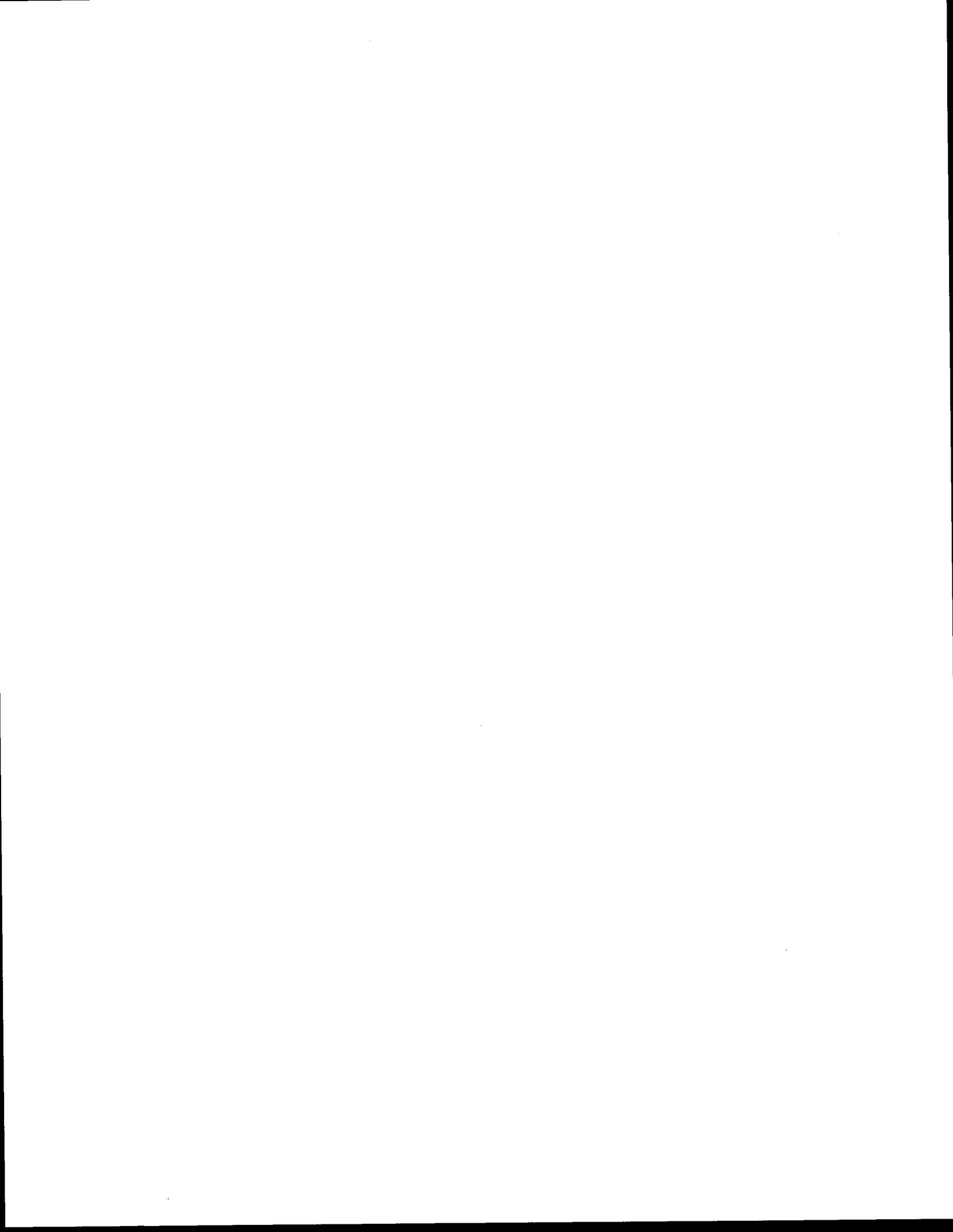
Address:  
Regional Rail Holdings, LLC  
c/o Levine Leichtman Capital  
Partners, Inc.  
335 North Maple Drive, Suite  
130  
Beverly Hills, California 90210  
Attention: David I. Wolmer  
Email: [dwolmer@llcp.com](mailto:dwolmer@llcp.com)

Subscribed to and sworn to before me, a Notary Public, in and for the County of Los Angeles in the State of California, this \_\_\_ day of July 2015.

*please see attached Jurat*  
Notary Public

My Commission expires on \_\_\_\_\_

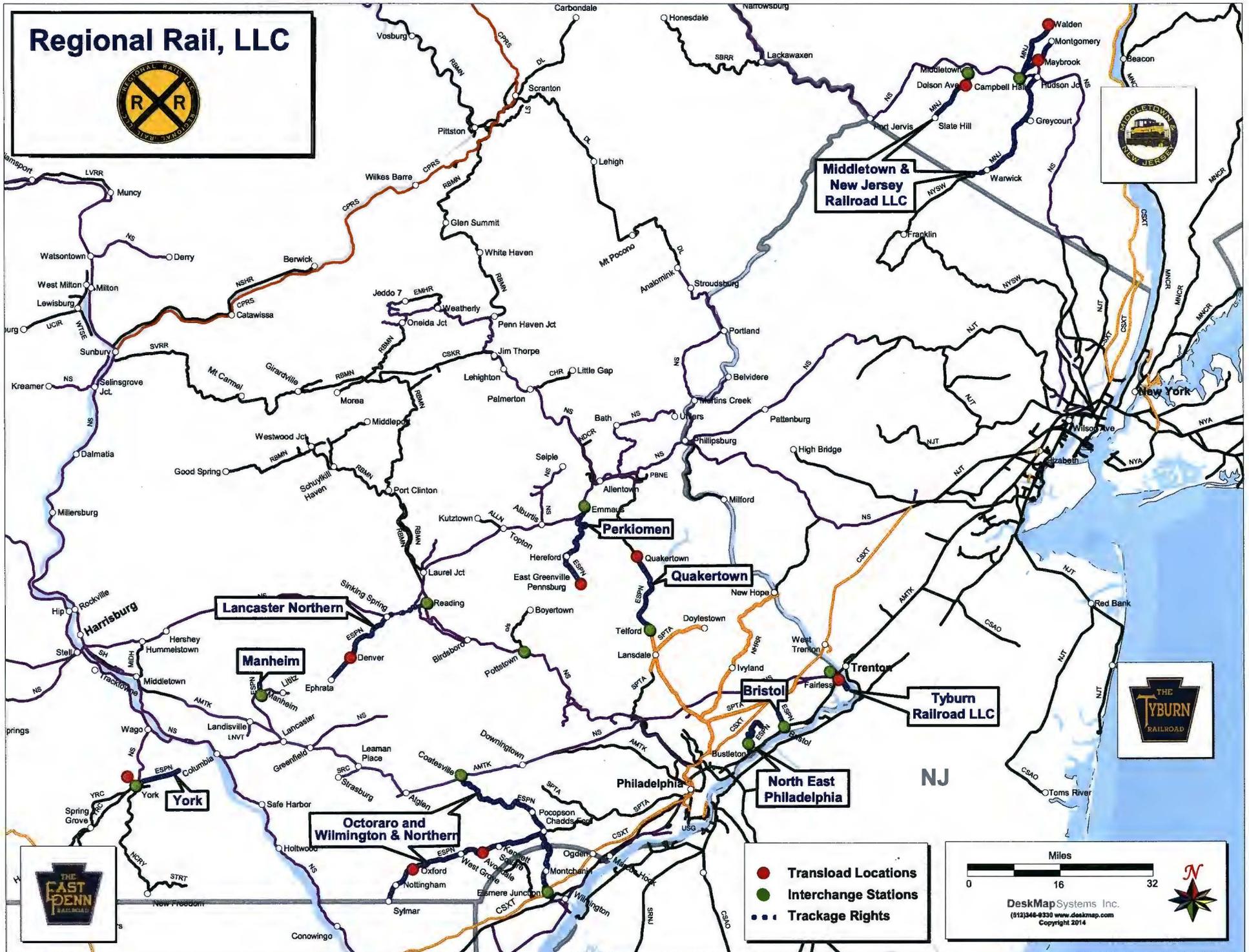




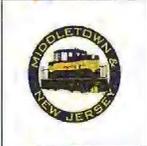
# **EXHIBIT A**



# Regional Rail, LLC



**Middletown & New Jersey Railroad LLC**



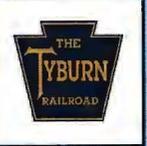
**Perkiomen**

**Quakertown**

**Lancaster Northern**

**Manheim**

**Tyburn Railroad LLC**



**North East Philadelphia**

**Octoraro and Wilmington & Northern**

**York**



- Transload Locations
- Interchange Stations
- Trackage Rights

Miles  
0 16 32

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(812)344-8330 www.deskmap.com  
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# **EXHIBIT B**





**REGIONAL RAIL, LLC.**  
505 South Broad Street  
Kennett Square, PA 19348  
(610) 925-0131 Phone  
(610) 925-0135 Fax

July 22, 2015

**VIA FEDERAL EXPRESS**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

**Re: STB Finance Docket No. 35945, Regional Rail Holdings, LLC – Control Exemption –  
Regional Rail, LLC**

Dear Ms. Brown:

I am writing on behalf of Regional Rail, LLC, a Delaware corporation, and each of its equityholders (“Sellers”) to express our strong support for the Verified Notice of Exemption of Regional Rail Holdings, LLC. (“Regional Holdings”) in the above-captioned proceeding, in which Regional Holdings seeks approval by exemption to acquire Regional Rail, LLC (“Regional Rail”). Sellers are Regional Rail’s current owners, and believe Regional Holdings will significantly increase the potential of Regional Rail to provide rail service.

Seller also support Regional Holdings’ request for expedited consideration of this matter. The parties hope to close the transaction as soon as possible. In addition, expedited consideration of the transaction will allow Regional Holdings to monetize the equity of one of the Sellers after closing and invest further in rail service and infrastructure. Moreover, expedited consideration will help to minimize potential disruption to the business as a result of the change in majority ownership.

Thank you for your consideration of Sellers’ position on this matter

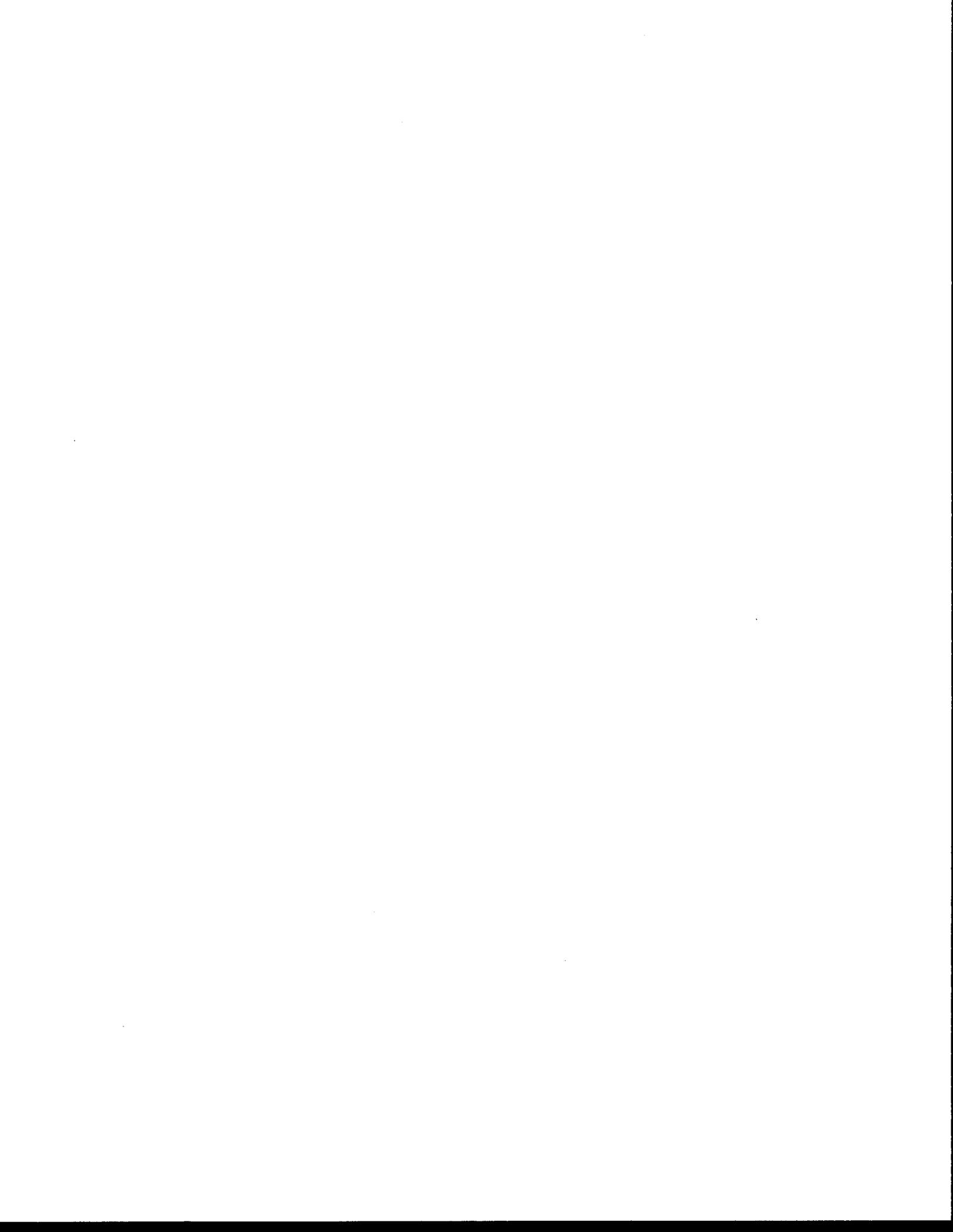
Respectfully Submitted,

---

Name: Robert C. Parker  
President and Chief Executive Officer



# **EXHIBIT C**



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**SECURITIES PURCHASE AGREEMENT**

**AMONG**

**REGIONAL RAIL HOLDINGS, LLC,**

**REGIONAL RAIL, LLC,**

**OTHER SELLERS THAT ARE SIGNATORIES TO THIS AGREEMENT,**

**AND**

**[•], AS SELLERS' REPRESENTATIVE**

**DATED AS OF AUGUST [•], 2015**

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## SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement"), dated as of August [●], 2015, is among: (i) Regional Rail Holdings, LLC, a Delaware limited liability company ("Purchaser"); (ii) Regional Rail, LLC, a Delaware limited liability company ("Parent Company"); (iii) [REDACTED], (iv) [REDACTED] "Sellers" and each individually, a "Seller") and (v) [REDACTED] in its capacity as the designated representative of Sellers ("Sellers' Representative"). Purchaser, Parent Company, Sellers and Sellers' Representative are referred to in this Agreement collectively as the "Parties," and individually as a "Party."

### Preliminary Statements

A. Parent Company is and, as of the Closing Date will be, the holder of record and beneficial owners of, 100% of the issued and outstanding Equity Securities of each of the Subsidiaries of Parent Company described on Schedule 1-A as wholly owned Subsidiaries (collectively, the "Shortline Subsidiaries") and [REDACTED].

B. Immediately prior to the execution of this Agreement, (i) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

C. Sellers desire to sell to Purchaser, and Purchaser desires to purchase and acquire from Sellers, at the Closing, all of the Equity Securities of Parent Company (the "Acquired Securities") on the terms of, and subject to the conditions in, this Agreement.

### Agreement

In consideration of the representations, warranties, covenants, and agreements contained in this Agreement, and intending to be legally bound hereby, the Parties agree as follows:

#### Article I

#### Definitions; Interpretation

**1.1 Definitions.** Capitalized terms in this Agreement have the respective meanings set forth in Appendix A.

**1.2 Interpretation.** As used in this Agreement, except as otherwise indicated in this Agreement or as the context may otherwise require: (a) the words "include," "includes," and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar import; (b) the word "or" is not exclusive; (c) references to an "Article," "Section," "preamble," "Recital," or any other subdivision, or to an "Appendix," "Exhibit," "Schedule," or "Disclosure Schedule" are to an article, section, preamble, recital, or subdivision of this Agreement, or to an appendix, exhibit, schedule, or disclosure schedule to this Agreement; (d) the words "this Agreement," "hereby," "hereof," "herein," "hereunder," and comparable words refer to all of this Agreement, including the Appendices, Exhibits, Schedules, and Disclosure Schedules to this Agreement, and not to any particular article, section, preamble, recital, or other subdivision of this Agreement or appendix, exhibit, schedule, or disclosure schedule to this Agreement; (e) any pronoun in masculine, feminine, or neuter form shall include any other gender; (f) the definitions contained in this Agreement apply to the singular as well as plural forms of such term; (g) except for purposes of any representation or warranty made in this Agreement or any certificate delivered in connection herewith, references to any agreement or other document are to such agreement or document as amended, modified, superseded, supplemented, and restated now or from time to time

after the date of this Agreement; (h) references to any Law are to it as amended, modified, supplemented, and restated as of the date of this Agreement, and, unless the context requires otherwise, any reference to any statute shall be deemed also to refer to all rules and regulations promulgated thereunder; (i) references to any Person include such Person's respective successors and permitted assigns (and in the case of a natural person, such Person's heirs, estate, and personal representatives); (j) references to a "day" or number of "days" (without the explicit qualification of "Business") refer to a calendar day or number of calendar days; (k) the word "extent" in the phrase of "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if;" (l) any document uploaded to the Data Room at least five Business Days prior to the date of this Agreement, with respect to which Purchaser has had commercially reasonable access shall be considered "made available" or "provided" to Purchaser; and (k) references to "dollars" or "\$" refer to United States dollars. If interest is to be computed under this Agreement, it shall be computed on the basis of a 360-day year of 12 30-day months. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or notice may be taken or given on the next succeeding Business Day. Any financial or accounting term that is not otherwise defined in this Agreement shall have the meaning given such term under GAAP.

## **Article II**

### **Purchase and Sale of Acquired Securities**

**2.1 Purchase and Sale of Acquired Securities.** Subject to the terms and conditions of this Agreement, at the Closing, Sellers shall transfer, sell, and deliver to Purchaser, free and clear of all Encumbrances, other than Permitted Equity Encumbrances, and Purchaser shall purchase and accept delivery of, the Acquired Securities in exchange for the Total Consideration delivered by or behalf of Purchaser in accordance with the terms of this Agreement.

**2.2 Total Consideration.** The aggregate consideration to be paid by Purchaser in accordance with the terms, and subject to the conditions, of this Agreement for the purchase of the Acquired Securities and the other Contemplated Transactions (collectively, the "**Total Consideration**") shall be:

(a) (i) the Shortline Closing Consideration; *plus or minus* (ii) the Shortline Adjustment Amount, if any (collectively, the "**Shortline Total Consideration**"); *plus*

■ [REDACTED]

**2.3 Determination of Closing Consideration.**

(a) **Preliminary Statement.** The payments at Closing shall be determined pursuant to the terms of this Section 2.3. Sellers' Representative shall deliver to Purchaser (all of which shall reasonably acceptable to Purchaser) a draft estimated balance sheet of Parent Company and its Subsidiaries as of the Effective Time (the "**Initial Balance Sheet**") prepared in accordance with the Accounting Policies, together with a statement (the "**Preliminary Statement**") setting forth in reasonable detail Sellers' Representative's good faith calculation of:

(i) **Shortline Subsidiaries Adjustments.** For the Shortline Subsidiaries, (A) the estimated amount of Shortline Closing Cash ("**Shortline Estimated Cash**"); (B) the estimated amount of the Shortline Closing Indebtedness ("**Shortline Estimated Debt**"); (C) the estimated amount of Shortline Transaction Expenses ("**Shortline Estimated Transaction Expenses**"); (D) the estimated amount of Shortline Closing W/C ("**Shortline Estimated W/C**"); (E) the estimated amount, if any, by which the Shortline W/C is (I) less than the Shortline W/C Target (the "**Shortline Estimated Decrease Amount**"), or (II) greater than the Shortline W/C Target (the "**Shortline Estimated Increase Amount**").

■ [REDACTED]

[REDACTED]

(b) Closing Payments.

(i) Subject to the terms and conditions of this Agreement, including the reductions in respect of the Rollover Amounts as described in Section 3.3(a)(iii), the aggregate consideration to be paid or delivered by Purchaser to Sellers in connection with the sale of Acquired Securities at the Closing shall be (i) the Shortline Closing Consideration, *plus* (ii) the [REDACTED].

(ii) For purposes of this Agreement "**Shortline Closing Consideration**" means: (A) a dollar amount equal to the Shortline Gross Cash Consideration; *plus* (B) the Shortline Estimated Cash, if any; *plus* (C) the Shortline Estimated Increase Amount, if any; *minus* (D) the Shortline Estimated Decrease Amount, if any; *minus* (E) the sum of the following, without duplication (the "**Shortline Closing Deductions**"): (I) the amount of Shortline Closing Indebtedness; *plus* (II) the Shortline Estimated Transaction Expenses not paid at or before the Closing; *plus* (III) the Shortline Escrow Amount.

[REDACTED]

**2.4** Escrow Accounts.

(a) Indemnification Escrow Amount. At the Closing, the Parties shall establish with the Escrow Agent a segregated interest-bearing escrow account (the "**Indemnification Escrow Account**") for the purposes of securing the indemnification obligations of Sellers under Article X, into which Purchaser shall fund or cause to be funded out of the Closing Consideration, by wire transfer of immediately available funds to the account designated by the Escrow Agent before the Closing, an amount equal to the Indemnification Escrow Amount. Interest on the Indemnification Escrow Amount shall become part of the Indemnification Escrow Amount for all purposes under this Agreement. The Indemnification Escrow Amount shall be released as provided in Section 10.5.

(b) Adjustment Escrow Amount. At the Closing, the Parties shall establish with the Escrow Agent a segregated interest-bearing escrow account (the "**Adjustment Escrow Account**"), into which Purchaser shall fund or cause to be funded out of the Closing Consideration, by wire transfer of immediately available funds to the account designated by the Escrow Agent before the Closing, an amount equal to the Adjustment Escrow Amount. Interest on the Adjustment Escrow Amount shall become part of the Adjustment Escrow Amount for all purposes under this Agreement. The Adjustment Escrow Amount shall be released as provided in Section 2.6(i)(iii).

(c) The Indemnification Escrow Amount and the Adjustment Escrow Amount shall be held by the Escrow Agent pursuant to a single escrow agreement in substantially the form of Exhibit A (the "**Escrow Agreement**").

**2.5 Post-Closing Adjustment Amounts.** The Shortline Closing Consideration [REDACTED] shall each be subject to adjustment after the Closing in accordance with this Section 2.4 and Section 2.6.

(a) Shortline Increase or Decrease in Consideration. After the Closing Date, the Shortline Closing Consideration shall be, on a dollar for dollar basis: (i) reduced by the amount, if any, by which the Shortline Closing Cash is less than the Shortline Estimated Cash or increased by the amount, if any, by which the Shortline Closing Cash is greater than the Shortline Estimated Cash; (ii) reduced by the amount, if any, by which the Shortline Closing Debt is greater than the Shortline Estimated Debt or increased by the amount, if any, by which the Shortline Closing Debt is less than the Shortline Estimated Debt; (iii) reduced by the amount, if any, by which the Shortline Closing Transaction Expenses is greater than the Shortline Estimated Transaction Expenses or increased by the amount, if any, by which the Shortline Closing Transaction Expenses is less than the Shortline Estimated Transaction Expenses; and (iv) reduced by the amount, if any, by which the Shortline Closing W/C is less than the Shortline Estimated W/C or increased by the amount, if any, by which the Shortline Closing W/C is greater than the Shortline Estimated W/C. The net amount of all sums that are an increase or decrease to the Shortline Closing Consideration as contemplated by clauses (i)-(iv) of this Section 2.4(a) as finally determined pursuant to Section 2.6, is referred to herein as the "Shortline Adjustment Amount."

(b) [REDACTED]

**2.6 Working Capital Adjustment Procedures and Final Purchase Price.**

(a) Purchaser's Working Capital Statement. As promptly as practicable, but in any event not later than 5:00 p.m. New York time on the date that is 60 days after the Closing Date, Purchaser shall deliver (or cause to be delivered) to Sellers's Representative an unaudited balance sheet of Parent Company and its Subsidiaries as of the Effective Time (the "Closing Balance Sheet") and as finally determined pursuant to this Section 2.6) prepared in accordance with the Accounting Policies, together with Purchaser's good-faith calculation of: (i) the actual amount of Cash of Shortline Subsidiaries as of the Closing ("Shortline Closing Cash"); (ii) the actual amount of the Shortline Closing Indebtedness ("Shortline Closing Debt"); (iii) the actual amount of Shortline Transaction Expenses as of the Closing ("Shortline Closing Transaction Expenses"); (iv) Shortline Closing W/C; [REDACTED]

[REDACTED] (collectively, "Purchaser's Statement") and reasonable supporting documentation. Purchaser's Statement shall be accompanied by a line-item reconciliation to the Preliminary Statement.

(b) Cooperation. Sellers' Representative and Purchaser shall, and Purchaser shall cause the Acquired Companies after the Closing Date to, cause their respective Entity Representatives and independent accountants to cooperate and assist as reasonably requested by the Parties and the Accounting Referee in the preparation of the Initial Balance Sheet, Closing Balance Sheet, Preliminary Statement, Purchaser's Statement,

and the calculation of each item set forth therein, and in the conduct of the reviews referred to in this Section 2.6, including making available to the extent reasonably necessary their respective books, records, work papers, and personnel until the later of the (i) Shortline Determination Date or (ii) the Diamondback Determination Date.

(c) Determination Dates.

(i) The date (the "**Shortline Determination Date**") on which the Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, and Shortline Closing Transaction Expenses and the resulting Shortline Adjustment Amount and Final Shortline Purchase Price, are finally determined shall be deemed to be the earliest of: (A) the Objection Date, if Sellers' Representative has not delivered an Objection Notice by 5:00 p.m. New York time on the Objection Date; (B) the date on which Purchaser and Sellers' Representative have resolved in writing all disputed amounts set forth in an Objection Notice that has been timely delivered to Purchaser by Sellers' Representative pursuant to Section 2.6(e); and (C) the date on which the Accounting Referee delivers its report as to the final determination of the Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, and Shortline Closing Transaction Expenses.

(ii) The date (the "**Diamondback Determination Date**") on which the Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses, and the resulting Diamondback Adjustment Amount and Final Diamondback Purchase Price, are finally determined shall be deemed to be the earliest of: (A) the Objection Date, if Sellers' Representative has not delivered an Objection Notice by 5:00 p.m. New York time on the Objection Date; (B) the date on which Purchaser and Sellers' Representative have resolved in writing all disputed amounts set forth in an Objection Notice that has been timely delivered to Purchaser by Sellers' Representative pursuant to Section 2.6(e); and (C) the date on which the Accounting Referee delivers its report as to the final determination of the Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses.

(d) Acknowledgement. The Parties acknowledge and agree that the purpose of determining the Shortline Closing W/C and Diamondback Closing W/C and the adjustments, if any, to the Total Consideration with respect thereto contemplated by this Section 2.6 is to measure (in accordance with the Accounting Policies) differences, if any, between the Shortline W/C Target and the Shortline Closing W/C, and the Diamondback W/C Target and the Diamondback Closing W/C.

(e) Objection Notice. If Sellers' Representative objects to any portion of the Closing Balance Sheet or Purchaser's Statement, then Sellers' Representative may, as promptly as practicable but in any event not later than 5:00 p.m. New York time on the date that is 30 days after receipt by Sellers' Representative of the Closing Balance Sheet and Purchaser's Statement (the "**Objection Date**"), deliver a written notice (an "**Objection Notice**") to Purchaser. An Objection Notice shall specify: (i) those particular items or amounts set forth in the Closing Balance Sheet or Purchaser's Statement as to which Sellers' Representative objects; (ii) those obligations of Purchaser under this Agreement relating to Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses that Sellers' Representative contests have been improperly discharged; (iii) the reasons, in reasonable detail, for each such objection together with any supporting documentation available to Sellers' Representative; and (iv) Sellers' Representative's calculation of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses. Purchaser's calculation of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses in Purchaser's Statement shall be deemed final, binding, non-appealable, and conclusive, except for the items specifically identified as disputed in an Objection Notice, if any, that is timely delivered by Sellers' Representative pursuant to this Section 2.6(e).

(f) Dispute Resolution.

(i) If an Objection Notice has been timely delivered to Purchaser by Sellers' Representative pursuant to Section 2.6(e), Sellers' Representative and Purchaser shall, during the 30 days after such delivery (the "Negotiation Period"), negotiate in good faith to reach agreement on the disputed items or amounts in order to determine Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses. If, during such period, Sellers' Representative and Purchaser agree as to any component of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses, then Sellers' Representative and Purchaser shall execute a written acknowledgement of such agreed upon amounts, such amounts shall be deemed final, binding, non-appealable, and conclusive on all Parties, and the Negotiation Period will be deemed expired as of such date of agreement and acknowledgment.

(ii) If Sellers' Representative and Purchaser are unable to agree on all such disputed items or amounts during the Negotiation Period, then the items or amounts that remain in dispute shall be resolved by Hein and Associates, LLP, or if such firm declines to act in such capacity, by such other firm of independent accountants having no material relationship with any Party or the Acquired Companies and reasonably acceptable to both Sellers' Representative and Purchaser (the "Accounting Referee"). To the extent necessary, Sellers' Representative and Purchaser shall act in good faith to promptly agree on the Accounting Referee and to execute such engagement letters and other documents as shall be reasonably necessary to engage the Accounting Referee within 20 days after the expiration of the Negotiation Period.

(iii) Purchaser and Sellers' Representative shall instruct the Accounting Referee in its engagement letter or in another joint written statement that the Accounting Referee: (A) shall act as experts in accounting, and as an arbitrator solely with respect to items in dispute under the Objection Notice, to resolve, in accordance with the Accounting Policies, the items or amounts that remain in dispute from the Objection Notice, and that are not deemed by this Agreement to be final, binding, non-appealable, and conclusive; (B) shall apply the provisions of Sections 2.4 or 2.6 to the disputed issues, and shall have no authority or power to alter, modify, amend, add to or subtract from any term or provision of this Agreement; (C) shall make a determination as to the amount of each item of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses that is in dispute, as applicable, which amount shall not exceed the greatest value assigned to it by Purchaser or Sellers' Representative or be less than the smallest value assigned to it by Purchaser or Sellers' Representative; and (D) shall use commercially reasonable efforts to complete its work and deliver to Sellers' Representative and Purchaser a written report of its decision as promptly as practicable, and in any event within 45 days after the engagement of the Accounting Referee. None of Purchaser, Sellers' Representative nor any of their respective Entity Representatives or independent accountants shall have any ex parte communications or meetings with the Accounting Referee regarding the subject matter of this Agreement without the other Party's prior written consent and each such Party shall contemporaneously provide the other with copies of any documents, materials or other information submitted by such Party to the Accounting Referee. Once the Accounting Referee has been engaged, if the Accounting Referee withdraws after a challenge, dies, or otherwise resigns or is removed, then such Accounting Referee shall be replaced within 20 days thereafter by Purchaser and Sellers' Representative in accordance with this Section 2.6(f) and the time periods in this Section 2.6(f) shall be adjusted and commence anew as of the date on which a replacement referee has been engaged.

(iv) As promptly as practicable, and in any event within 20 days after the engagement of the Accounting Referee, Purchaser and Sellers' Representative shall deliver to the Accounting Referee (with a copy to the other Party) a written presentation as to its position of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses. The Accounting Referee shall use commercially reasonable efforts to complete its work and deliver to Sellers' Representative and Purchaser a written report of its decision as promptly as practicable, and in any event within 45 days after the

engagement of the Accounting Referee. The Accounting Referee's report shall include a calculation of the disputed item and the resulting calculation of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses, and a line-item comparison (showing increases and decreases) to the calculations contained in Purchaser's Statement and the Objection Notice, together with explanations of each variance. If any dispute is submitted to the Accounting Referee pursuant to this Section 2.6(f), the disputed item and resulting calculation of Shortline Closing W/C, Shortline Closing Cash, Shortline Closing Debt, Shortline Closing Transaction Expenses, Diamondback Closing W/C, Diamondback Closing Cash, Diamondback Closing Debt, and Diamondback Closing Transaction Expenses, as applicable, as determined by the Accounting Referee and set forth in its report, and the resulting Shortline Adjustment Amount, Final Shortline Purchase Price, Diamondback Adjustment Amount and Final Diamondback Purchase Price, shall be final, binding, non-appealable, and conclusive.

(g) The fees and expenses (including any retainer) of the Accounting Referee shall be borne by Purchaser, on the one hand, and Sellers' Representative (on behalf of Sellers), on the other hand, based on the inverse of the percentage that the Accounting Referee's determination bears to the total amount of the items in dispute as originally submitted to the Accounting Referee. For example, should the items in dispute total in an amount equal to \$1,000 and the Accounting Referee awards \$600 in favor of Sellers' Representative's position, 60% of the costs of its review would be borne by the Buyer and 40% of the costs would be borne by Sellers' Representative (on behalf of Sellers).

(h) Final Purchase Prices. The Shortline Closing Consideration, as adjusted by the Shortline Adjustment Amount, if at all, as finally determined pursuant to this Section 2.6, shall be referred to as the "**Final Shortline Purchase Price**." The Diamondback Closing Consideration, as adjusted by the Diamondback Adjustment Amount, if at all, as finally determined pursuant to this Section 2.6, shall be referred to as the "**Final Diamondback Purchase Price**."

(i) True-Up Payment.

(i) If, upon determination of the Shortline Adjustment Amount, (A) the Final Shortline Purchase Price is greater than the Shortline Closing Consideration, then Purchaser shall pay, or cause the Acquired Companies to pay, to Sellers' Representative (for distribution to Shortline Sellers in accordance with their respective Shortline Proportionate Shares) an amount in cash equal to the Shortline Adjustment Amount; or (B) the Final Shortline Purchase Price is less than the Shortline Closing Consideration, then Shortline Sellers shall (in accordance with their respective Shortline Proportionate Shares) pay to Purchaser an amount in cash equal to the Shortline Adjustment Amount.

(ii) If, upon determination of the Diamondback Adjustment Amount, (A) the Final Diamondback Purchase Price is greater than the Diamondback Closing Consideration, then Purchaser shall pay, or cause the Acquired Companies to pay, to Sellers' Representative (for distribution to Sellers) an amount in cash equal to the Diamondback Adjustment Amount; or (B) the Final Diamondback Purchase Price is less than the Diamondback Closing Consideration, then Sellers shall pay to Purchaser an amount in cash equal to the Diamondback Adjustment Amount.

(iii) Notwithstanding the foregoing, any amount payable by the Sellers pursuant to this Section 2.6(i) shall first be satisfied from the Adjustment Escrow Account (to the extent of funds then remaining therein). Within two (2) Business Days after the date on which both the Final Shortline Purchase Price and Final Diamondback Purchase Price have been finally determined, Purchaser and Sellers' Representative shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to deliver (x) to Purchaser or its designee the amount payable by the Sellers pursuant to this Section 2.6(i) (to the extent of the funds in the Adjustment Escrow Account) and (y) to Sellers' Representative (for distribution to the Sellers) any funds remaining in the Adjustment Escrow Account (after delivery of the amount pursuant to clause (x) above).

(iv) Except as provided above with respect to payments from the Adjustment Escrow Account, all payments made pursuant to this Section 2.6(i) shall be made by wire transfer of immediately available funds within five Business Days following determination of the Final Shortline Purchase Price and the Final Diamondback Purchase Price.

**2.7 Tax Treatment.** For U.S. federal income tax purposes, the transfer of the Acquired Securities is intended to be treated as (i) (A) a sale by (1) each Rollover Seller of a pro rata portion of the Acquired Securities held by such Rollover Seller to Purchaser, and (2) the Shortline Seller that is not a Shortline Rollover Seller of all of the Acquired Securities held by such Shortline Seller, in each case in exchange for the Closing Consideration, which sale shall be governed by Section 1001 of the Code, and (B) a contribution by each of the Rollover Sellers of a pro rata portion of the Acquired Securities to Purchaser in exchange for the Purchaser Units, which contribution shall be governed by Section 721 of the Code, and (ii) the acquisition by Purchaser of all of the assets of the Acquired Companies in exchange for the Total Consideration and the Purchaser Securities. Following the transactions contemplated by this Agreement, the Company will be treated as a disregarded entity for U.S. federal income tax purposes.

**2.8 Withholding Taxes.** Purchaser shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable under or in connection with this Agreement such amounts as are required to be deducted or withheld therefrom under any applicable provision of federal, state, local, foreign Tax Law or under any other applicable Law. To the extent such amounts are so deducted or withheld and paid to the applicable Governmental Entity, such amounts shall be treated for all purposes under this Agreement as having been paid by Purchaser to the Person to whom such amount otherwise was payable or deliverable.

### **Article III** **Closing**

**3.1 Closing.** The purchase and sale of the Acquired Securities shall be consummated at a closing (the "**Closing**") to take place remotely via the electronic exchange of documents and signatures on the date of this Agreement. The date and time that the Closing actually occurs is referred to herein as the "**Closing Date**." Notwithstanding the foregoing and regardless of the time at which funds are actually transmitted, the purchase and sale of the Acquired Securities shall be deemed to have been consummated at 12:01 a.m. New York, New York, time on the Closing Date (the "**Effective Time**").

**3.2 Delivery of Acquired Securities.** At the Closing, each Seller shall deliver to Purchaser a power of attorney for securities assignment with respect to all of such Seller's Acquired Securities in substantially the form of Exhibit B (the "**Securities Assignment**"), duly endorsed in blank.

**3.3 Delivery by Purchaser of Closing Consideration.** At the Closing, Purchaser shall deliver or cause to be delivered the Closing Consideration in accordance with this Section 3.3.

(a) The Closing Deductions shall be paid as follows:

(i) the Closing Indebtedness Payoff Amount shall be delivered on behalf of the Acquired Companies and applicable Sellers in immediately available funds to the accounts designated in executed payoff letters reasonably satisfactory to Purchaser delivered by Sellers' Representative to Purchaser prior to the Closing Date; and

(ii) the unpaid Estimated Sellers Transaction Expenses shall be delivered on behalf of the Acquired Companies and applicable Sellers in immediately available funds to the payees therefore in accordance with the wire instructions provided by such payee and delivered by Sellers' Representative to Purchaser prior to the Closing Date.

(iii) Purchaser shall deliver by wire transfer the Indemnification Escrow Amount and the Adjustment Escrow Amount for deposit into the Indemnification Escrow Account and the Adjustment Escrow Account, respectively, with the Escrow Agent pursuant to the Escrow Agreement.

(b) After payment of the Closing Deductions, Purchaser shall deliver or cause to be delivered: (i) an amount equal to the Shortline Closing Consideration to Shortline Sellers by wire transfer of immediately available funds in the amounts and to the accounts designated by Sellers' Representative in the Allocation Schedule; *provided* that with respect to each Shortline Rollover Seller, the Shortline Closing Consideration payable hereunder by Purchaser to such Seller shall be reduced on a dollar for dollar basis by the Rollover Amount of such Shortline Rollover Seller and Purchaser shall have no obligation to pay such amount to any Person; and (ii) an amount equal to the Diamondback Closing Consideration, to Sellers by wire transfer of immediately available funds in the amounts and to the accounts designated by Sellers' Representative in the Allocation Schedule; *provided* that with respect to each Diamondback Rollover Seller, the Diamondback Closing Consideration payable hereunder by Purchaser to such Seller shall be reduced on a dollar for dollar basis by the Rollover Amount of such Diamondback Rollover Seller and Purchaser shall have no obligation to pay such amount to any Person.

(c) Purchaser shall issue to each Rollover Seller such Rollover Sellers' Purchaser Units and each Rollover Seller shall deliver an executed joinder to Purchaser's limited liability company agreement.

(d) The payment of the Closing Consideration, issuance of the Rollover Units and all Contracts, certificates, and instruments delivered at the Closing will be deemed to have been delivered simultaneously, and none of the Closing Consideration, such issuance or any such Contracts, certificates, and instruments shall be deemed delivered or waived until all have been delivered.

#### **Article IV** **Representations and Warranties Relating to Sellers**

Each Seller, severally and not jointly, represents and warrants to Purchaser, except as set forth in the corresponding sections of the Sellers Disclosure Schedule, as of the date of this Agreement:

**4.1 Standing.** If a natural person, such Seller has legal capacity to enter into this Agreement. If not a natural Person, such Seller is an Entity that was duly organized, is validly existing, and in good standing under the Laws of the state of its organization.

**4.2 Title to Acquired Securities.** Such Seller: (a) has good and valid title to and record and beneficial ownership of the Acquired Securities set forth on Section 5.2(a) of the Sellers Disclosure Schedule opposite such Seller's name, free and clear of all Encumbrances, other than Permitted Equity Encumbrances; (b) except for this Agreement, has not granted and is not a party to any option, purchase right, right of first refusal, call put or other Contract that would require the sale, transfer or other disposition the Acquired Securities s of such Seller; and (c) except for this Agreement and except as disclosed in Section 4.2 of the Sellers Disclosure Schedule, is not a party to any voting trust, voting agreement, investor rights, registration rights, equityholder, or other Contract relating to, binding on, or otherwise affecting the Acquired Securities of such Seller. The delivery by such Seller of a Securities Assignment at the Closing as provided in Section 3.2 will transfer good and valid title to the Acquired Securities, free and clear of all Encumbrances, other than Permitted Equity Encumbrances.

**4.3 Authority; Execution and Delivery; Enforceability.**

(a) **Power and Authority.** If a natural person, such Seller has full power and authority to execute and deliver the Transaction Documents to which such Seller is a party, to perform such Seller's obligations under such Transaction Documents, and to consummate the Contemplated Transactions applicable to such Seller. If not a natural person, such Seller has full corporate, limited liability company or limited partnership (as applicable) power and authority to execute and deliver the Transaction Documents to which such Seller is a

party, to perform such Seller's obligations under such Transaction Documents, and to consummate the Contemplated Transactions.

(b) Execution and Delivery; Enforceability. Each Transaction Document to which such Seller is a party has been duly executed and delivered by such Seller and (assuming due authorization, execution, and delivery by the other parties thereto) constitutes the legal, valid, and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, subject to the Remedies Exception. If such Seller is not a natural person, the execution and delivery by such Seller of this Agreement, the performance by such Seller of its obligations hereunder and under the other Transaction Documents to which it is a party, and the consummation by such Seller of the Contemplated Transactions have been duly authorized by all requisite corporate, limited liability company or limited partnership (as applicable) action on the part of such Seller.

**4.4 Consents and Authorizations; No Conflicts.** Except as set forth in Section 4.4 of the Sellers Disclosure Schedule, neither the execution and delivery of this Agreement or any other Transaction Document, nor the consummation of the Contemplated Transactions, will (a) violate any Law to which such Seller is subject; (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, Contract, lease, license, instrument, or other arrangement to which such Seller is a party or by which it is bound or to which any of its assets is subject; or (c) result in the imposition or creation of any Encumbrance, except for any Permitted Equity Encumbrance, on or with respect to any of the Acquired Securities or [REDACTED] of such Seller. The execution, delivery, and performance by such Seller of this Agreement and the Transaction Documents to which such Seller is a party does not and will not require the Consent or Approval of any Person.

**4.5 Brokers.** Such Seller has not retained any Person, other than the engagement by Parent Company of [REDACTED] (the fees and expenses of which shall be borne by Sellers), to act as a broker or finder, or agreed or become obligated to pay, or taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee, or similar commission or fee in connection with any of the Contemplated Transactions.

**4.6 Proceedings.** There are no Proceedings pending, or to such Seller's actual knowledge, threatened in writing against or affecting such Seller that would prohibit such Seller's performance under this Agreement or the other Transaction Documents or the consummation by such Seller of the Contemplated Transactions.

## **Article V**

### **Representations and Warranties Relating to the Acquired Companies**

Parent Company represents and warrants to Purchaser that, except as set forth in the corresponding sections of the Sellers Disclosure Schedule, as of the date of this Agreement:

#### **5.1 Organization and Good Standing.**

(a) Each Acquired Company is an Entity that was duly formed, is validly existing, and in good standing (if the concept of good standing applies) under the Laws of the state of its formation identified in Schedule 1-A. Copies of the Organizational Documents of the Acquired Companies have been delivered or made available to Purchaser prior to the date of this Agreement. No Acquired Company is in default under or in violation of any provision of its Organizational Documents.

(b) Each Acquired Company has full limited liability company power and authority to own, lease, or otherwise hold its assets and properties and to carry on its business as presently conducted. Except as would not reasonably be expected to have a Material Adverse Effect, each Acquired Company is duly qualified, authorized, registered, or licensed and in good standing (if the concept of good standing applies) to do business as a foreign Entity in each jurisdiction where the conduct or nature of its business or the ownership, leasing, or holding of its assets and properties makes such qualification, authorization, registration, or licensure necessary.

Each jurisdiction where each Acquired Company is required to be qualified, authorized, registered, or licensed as a foreign Entity is listed in Section 5.1 of the Sellers Disclosure Schedule.

## **5.2 Equity Securities; Capitalization.**

(a) Capitalization. The Acquired Securities constitute 100% of the issued and outstanding Equity Securities of Parent Company. Parent Company owns 100% of the issued and outstanding Equity Securities of the Shortline Subsidiaries and Diamondback. Section 5.2(a) of the Sellers Disclosure Schedule accurately and completely sets forth as of immediately prior to the Closing the capitalization of each Acquired Company, including (i) each class of Equity Securities; and (ii) a list of the names of each record and beneficial owner of such Equity Securities, and opposite the name of each such owner, the percentage and class of Equity Securities owned by each such owner. None of the Acquired Companies owns any Equity Securities of CRRT.

(b) Voting Debt. There are no authorized or outstanding bonds, debentures, notes, or other Indebtedness of any Acquired Company having the right to vote on or approve (or containing any provision granting any holder thereof or other Person the right to vote on or approve), or that are convertible into, or exchangeable for, securities having the right to vote on or approve, any matter on which any holder of Equity Securities of any Acquired Company may vote on or approve ("Voting Debt").

(c) Subsidiaries. Except for the Shortline Subsidiaries and Diamondback, none of the Acquired Companies has any Subsidiaries and do not own, directly or indirectly, (i) any Equity Security in any other Person, or (ii) any interest in a partnership, unincorporated joint venture, or other arrangement with any other Person involving the sharing of profits or losses, or in the nature of a partnership, joint venture, or other business enterprise.

(d) No Other Securities. Except for the Equity Securities held by such Persons and in such numbers set forth in Section 5.2(a) of the Sellers Disclosure Schedule, there are no other Equity Securities, options, or debt securities of any Acquired Company of any class or series that are issued or issuable, reserved for issuance, or outstanding. No former equity owner of any Acquired Company, or any of their respective predecessors, and no former holder of any right to acquire any interest in any Acquired Company, or any of their respective predecessors (whether by warrant, option, convertible instrument, or otherwise), has any claim or rights against any Acquired Company.

(e) Validity. The Acquired Securities and the Equity Securities of each other Acquired Company (i) were validly issued, are fully paid, and non-assessable and (ii) are not subject to, and were not issued and are not held in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right, or any similar right under the Organizational Documents or any Contract of Sellers or any Acquired Company, or any provision of applicable Law.

(f) Redemption; Voting Agreements. There are no agreements or outstanding obligations (contingent or otherwise) of any Acquired Company to repurchase, redeem, or otherwise acquire any Equity Securities. There are no voting trusts, equityholder agreements, commitments, undertakings, understandings, proxies, or other restrictions to which any Acquired Company is a party that, directly or indirectly, restrict or limit in any manner, or otherwise relate to, the voting, sale, or other disposition of any Equity Securities of any Acquired Company.

## **5.3 Authority; Execution and Delivery; Enforceability.**

(a) Power and Authority. Each Acquired Company has full limited liability company power and authority to execute and deliver the Transaction Documents to which such Acquired Company is a party, to perform its obligations under such Transaction Documents, and to consummate the Contemplated Transactions applicable to such Acquired Company.

(b) Due Authorization. The execution and delivery by each Acquired Company of the Transaction Documents to which such Acquired Company is a party, the performance by such Acquired Company of its obligations under such Transaction Documents, and the consummation by such Acquired Company of the Contemplated Transactions applicable to such Acquired Company, have been duly authorized by all necessary, limited liability company action of such Acquired Company.

(c) Execution and Delivery; Enforceability. Each Transaction Document to which any Acquired Company is a party has been duly executed and delivered by such Acquired Company, and (assuming due authorization, execution, and delivery by the other parties thereto) constitutes the legal, valid, and binding obligation of such Acquired Company, enforceable against such Acquired Company in accordance with its terms, subject to the Remedies Exception.

**5.4 Consents and Authorizations; No Conflicts.** The execution, delivery, and performance by Sellers of this Agreement, and the consummation of the Contemplated Transactions by Sellers, do not and will not as of the Closing: (a) result in a violation or breach (with or without notice or lapse of time, or both) of any provision of the Organizational Documents of any Acquired Company; (b) result in a violation or breach (with or without notice or lapse of time, or both) of any provision of any Law or Governmental Order or Permit applicable to any Seller or any Acquired Company; or (c) except as set forth in Section 5.4(c) of the Sellers Disclosure Schedule, require the consent, notice, or other action by any Person under, conflict with, result in a violation or breach of or constitute a default under (with or without notice or lapse of time, or both), or result in the acceleration of, create in any party the right to accelerate, terminate or cancel, any Material Contract or Permit. Except as set forth in Section 5.4(c) of the Sellers Disclosure Schedule, no Consent or Approval, Permit, Governmental Order, declaration, or filing with, or notice to, any Person or Governmental Entity is required by any Seller or any Acquired Company in connection with the execution and delivery of this Agreement and the consummation of the Contemplated Transactions.

**5.5 Financial Matters.** Attached to Section 5.5 of the Sellers Disclosure Schedule are the following: (i) the reviewed consolidated financial statements consisting of the balance sheet (the "Year-End Balance Sheet") of Parent Company and its Subsidiaries as of December 31, 2014 (the "Year-End Balance Sheet Date"), and the related consolidated statements of income, members' equity, and cash flow for the year then ended (collectively, the "Reviewed Financial Statements"); (ii) the unaudited consolidated and consolidating financial statements consisting of the balance sheet for the Acquired Companies as of December 31, 2014, and the related statements of income and cash flow for the year then ended; and (iii) the unaudited financial statements consisting of the balance sheet for the Acquired Companies (the "Interim Balance Sheets") as at May 31, 2015 (the "Interim Balance Sheet Date"), and the related statements of income and cash flow for the five-month period then ended (collectively, the "Interim Financial Statements" and together with clauses (i) and (ii), collectively, the "Financial Statements"). The Financial Statements are materially accurate and complete and derived from the books and records of the Acquired Companies (which, in turn, are materially accurate and complete), fairly present in all material respects the financial condition of the Acquired Companies as of the respective dates they were prepared and the results of the operations and cash flows of the Acquired Companies for the periods indicated, all in accordance with GAAP applied on a consistent basis throughout the periods involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes, none of which are materially adverse, individually or in the aggregate, to the Acquired Companies.

**5.6 No Undisclosed Liabilities.** No Acquired Company has any Liability, except for the following, none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of Contract, tort, infringement, or violation of Law: (a) Liabilities included on the Interim Balance Sheets; (b) accounts payable and Liabilities (of the types required to be reflected as current liabilities on a balance sheet prepared in accordance with acceptable GAAP) incurred by any Acquired Company since the date of its Interim Balance Sheet in the Ordinary Course of Business; (c) the Liabilities set forth in Section 5.6(c) of the Sellers Disclosure Schedule; (d) Liabilities under Contracts disclosed on the Sellers Disclosure Schedule not yet fully performed, and as to which the applicable Acquired Company is not in breach; and (e) obligations under Contracts not required to be listed in

the Sellers Disclosure Schedule because they are outside of a relevant time frame or below a specified dollar amount and as to which the applicable Acquired Company is not in breach.

**5.7 Absence of Changes or Events.** Since December 31, 2014, (x) there has not been a Material Adverse Effect and (y) each Acquired Company has conducted its business only in the Ordinary Course of Business. Except as set forth in Section 5.7 of the Sellers Disclosure Schedule, since the December 31, 2014, no Acquired Company:

(a) has sold, transferred, assigned, leased, subleased, licensed, or otherwise disposed of any of its assets, tangible or intangible, owned, leased, or licensed, with a value in excess of [REDACTED] individually or [REDACTED] in the aggregate, other than for fair consideration in the Ordinary Course of Business;

(b) has entered into, amended or terminated any Contract (or series of related Contracts) (i) involving more than [REDACTED], (ii) outside the Ordinary Course of Business, and (iii) with a term greater than 12 months;

(c) has created, incurred, or permitted to arise any Encumbrance on any of its assets, tangible or intangible, other than Permitted Encumbrances;

(d) has failed to make any budgeted capital expenditure (or series of related capital expenditures) or commitments therefor in excess of [REDACTED] in the aggregate;

(e) has made any capital investment in, any loan or advance to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loan, and acquisitions) whether or not in the Ordinary Course of Business;

(f) has (i) issued, created, incurred, assumed, or guaranteed any Indebtedness involving more than [REDACTED] individually or [REDACTED] in the aggregate, or (ii) made any voluntary purchase, cancellation, prepayment, or complete or partial discharge in advance of a scheduled payment date with respect to any Indebtedness;

(g) has canceled, compromised, waived, or released any right or claim (or series of related rights and claims) involving more than [REDACTED] or otherwise settled or compromised any litigation or other Proceeding;

(h) has made or authorized any change in the Organizational Documents of any Acquired Company;

(i) has issued, sold, or otherwise disposed of, or split, combined or subdivided, any of its capital stock or other Equity Securities, or granted any options or other rights to purchase or acquire (including upon conversion, exchange, or exercise) any of its capital stock or other Equity Securities;

(j) has experienced any casualty, damage, destruction, or loss (whether or not covered by insurance) to any of its assets or properties in excess of [REDACTED];

(k) has (i) increased the base compensation or wages of, or otherwise made any change in the employment or retention terms (other than in the Ordinary Course of Business not in excess of 3% of any such employee's compensation, wages or retention terms in effect as of the Year-End Balance Sheet Date) for, or (ii) paid any discretionary bonus or other cash or in kind award (other than sales commissions in the Ordinary Course of Business in excess of 10% of any such employee's compensation, wages or retention terms in effect as of the Year-End Balance Sheet Date) to, any of its respective employees;

(l) other than in the Ordinary Course of Business, as required by applicable Law, has (i) adopted, entered into, become bound by, or amended, modified or terminated, any bonus, profit-sharing,

incentive, severance, or other Employee Benefit Plan, any employment-related Contract or compensation arrangement, or any collective-bargaining agreement (other than in the Ordinary Course of Business, as required by applicable Law) or (ii) established or modified any (A) targets, goals, pools, or similar provisions under any Employee Benefit Plan, employment-related Contract or other employee compensation arrangement or (B) salary ranges, compensation increase guidelines, or similar provision with respect to any Benefit Plan, employment-related Contract or other employee compensation arrangement ;

(m) has implemented any employee layoffs that would implicate the WARN Act or any similar Law;

(n) has conducted its cash management practices other than in the Ordinary Course of Business or made any material change in any accounting methods, policies or practices of any Acquired Company;

(o) has (i) amended or modified (or requested any Governmental Entity to change) any accounting or Tax reporting periods or methods of any of the Acquired Companies, (ii) modified, changed or revoked any material Tax election of any of the Acquired Companies, (iii) settled or compromised any claim relating to Taxes of any of the Acquired Companies, (iv) amended any Tax Return of any of the Acquired Companies, (v) surrendered any claim for refund of Taxes or (vi) consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment;

(p) has assigned, transferred, licensed, permitted to lapse, abandoned or otherwise disposed of any Intellectual Property or Permit of any Acquired Company; or

(q) has entered into or agreed to enter into any Contract to do any of the foregoing.

**5.8 Indebtedness.** Section 5.8 of the Sellers Disclosure Schedule sets forth, with respect to each Acquired Company, an accurate itemized list of all Indebtedness of such Acquired Company (and the amounts outstanding with respect to such Indebtedness as of May 31, 2015). Except as set forth in Section 5.8 of the Sellers Disclosure Schedule, such Acquired Company has (i) no Indebtedness and (ii) the unrestricted right to pay or pre-pay all such Indebtedness at its par value without penalty or premium, in part or in full, at any time or from time to time after the date of this Agreement.

**5.9 Receivables.** All notes and accounts receivable of each Acquired Company reflected on its Interim Balance Sheet or that have arisen since the Interim Balance Sheet Date, except such notes and accounts receivable as have been collected after such date, are valid and enforceable claims and are not subject to any defense, offset, or counterclaim, subject in each case to the reserve for bad debts reflected in its Interim Balance Sheet. All such accounts receivable of each Acquired Company arose in the Ordinary Course of Business from the sale and delivery of goods by such Acquired Company or the provision of services by such Acquired Company. Section 5.9 of the Sellers Disclosure Schedule sets forth an accurate aging of all accounts receivable of each Acquired Company as of May 31, 2015.

**5.10 Title to Assets; Real Property.**

(a) Title to Assets. Each Acquired Company has good and valid title to, or a valid leasehold interest in, all tangible personal property, and other assets used by it or reflected in the Interim Financial Statements or acquired after the Interim Balance Sheet Date, including, but not limited to, furniture, fixtures, machinery, equipment, track repair equipment and machinery, vehicles including locomotives, trucks, loaders, cars, tractors, trailers, vans, and all other transportation rolling stock such as tracks, rails, ties, rail anchors, spikes, switches, crossings, bridges, trestles, culverts, leads, supporting structures, ballast, spurs, turnouts, tails, sidings, signals and crossing protection devices, buildings, improvements, structures, facilities and fixtures thereon and all other items of tangible personal property, other than properties and assets sold or otherwise disposed of in the Ordinary Course of Business since the Balance Sheet Date, and in each case free and clear of Encumbrances except for Permitted Encumbrances. Such assets and properties (i) have been maintained in accordance with normal industry practices, (ii) are in good operating condition and repair subject to normal wear and tear and (iii)

include all material properties and assets necessary for the continued conduct of the Acquired Companies' businesses after the Closing in substantially the same manner as conducted prior to the Closing.

(b) Real Property Interests.

(i) Section 5.10(b)(i) of the Sellers Disclosure Schedule sets forth milestone summaries of the real property in which each Acquired Company has at least a quit claim or other real property interest material to the operation of any Acquired Company's business ("**Real Property Interests**"). To the Knowledge of Sellers, the Real Property Interests described in Section 5.10(b)(i) of the Sellers Disclosure Schedule includes all the real property material to the operation of, the businesses of the Acquired Companies.

(ii) Except as set forth in Section 5.10(b)(ii) of the Sellers Disclosure Schedule, with respect to the Real Property Interests, each Acquired Company, as the case may be, has a valid leasehold, easement, right of way, trackage rights, license or other real property interest or otherwise has a valid right of possession, use or access that is sufficient to permit such Acquired Company, as the case may be, to operate as railroads or conduct such business as is currently conducted or carried on, in each case free and clear of all Encumbrances, except for Permitted Encumbrances.

(iii) Except as set forth in Section 5.10(b)(iii) of the Sellers Disclosure Schedule, no Acquired Company has received written notice of any condemnation proceeding, eminent domain or like proceeding or proposed action or agreement for taking in lieu of condemnation, nor is any such proceeding, action or agreement pending or, to the Knowledge of Sellers, threatened in writing, with respect to any portion of any Real Property Interest or any Leased Real Property.

(iv) To the Knowledge of Sellers, Section 5.10(b)(iv) of the Seller Disclosure Schedule sets forth all leases (the "**Real Property Leases**") relating to all real property, leased or subleased, material to the operation of any Acquired Company's business, including any lease or sublease of railroad lines or tracks, by any Acquired Company (collectively, the "**Leased Real Property**" and, together with the Real Property Interests, collectively, the "**Real Property**"). Sellers have delivered or made available to Purchaser copies of the Real Property Leases. Each Real Property Lease is in full force and effect according to its terms, and no Acquired Company has received written notice that it is currently in default (beyond any applicable notice and cure period) under the Real Property Leases. No Acquired Company is a party to any lease or similar occupancy arrangement under which such Acquired Company is a lessor, sublessor, or otherwise makes available for use by any third party any portion of the Leased Real Property, except as set forth in Section 5.10(b)(iv) of the Seller Disclosure Schedule. All consents and approvals set forth in Section 5.10(b)(iv) of the Seller Disclosure Schedule, which relate to the Leased Real Property in connection with the transactions contemplated under this Agreement, have been, or as of the Closing Date will be, obtained and furnished in writing by Sellers to Purchaser.

(v) To the Knowledge of Sellers, the obligations of the applicable Acquired Company with regard to all material applicable easements, covenants, and restrictions encumbering the Real Property, have been and are being performed in all material respects in substantial compliance with the terms thereof. No Acquired Company has received written notice that it is currently in default (beyond any applicable notice and cure period) under any Contract or Judgment relating to the Real Property.

**5.11 Intellectual Property.**

(a) Section 5.11(a) of the Sellers Disclosure Schedule lists all patents, patent applications, trademark registrations, and pending applications for registration, copyright registrations, and pending applications for registration and internet domain name registrations owned by any Acquired Company. The Acquired Companies own or have the right to use all Intellectual Property necessary to conduct the businesses of the Acquired Companies as currently conducted and as currently contemplated to be conducted by Sellers (the "**Acquired Intellectual Property**"), in each case free and clear of Encumbrances except for Permitted Encumbrances. To the extent of the Acquired Companies' ownership or license, as applicable, all Acquired Intellectual Property is subsisting in full force and effect and is valid and enforceable and the Acquired Companies

possess all rights, title and interest in and to same. No third party has any rights in or to the Acquired Intellectual Property nor will any third party acquire any rights in same by virtue of the Contemplated Transactions. No Acquired Intellectual Property has been abandoned, canceled or adjudicated invalid (excepting any expirations in the ordinary course), or is subject to any outstanding Judgment restricting its use or adversely affecting or reflecting the rights of any Acquired Company thereto.

(b) Except as set forth in Section 5.11(b) of the Sellers Disclosure Schedule, to the Knowledge of Sellers: (i) the Acquired Intellectual Property as currently licensed or used by any Acquired Company, and the such Acquired Company's conduct of its business as currently conducted, do not infringe, violate, or misappropriate the Intellectual Property of any Person; and (ii) no Person is infringing, violating, or misappropriating any Acquired Intellectual Property.

(c) Schedule 5.11(c) of the Sellers Disclosure Schedule lists all of the material Intellectual Property licenses or Contracts to which any Acquired Company is a party, other than Contracts for off-the-shelf software or other software generally available from retail vendors, in each case with an annual license or maintenance fee less than [REDACTED].

(d) The Acquired Companies have taken commercially reasonable measures to protect the secrecy, confidentiality and value of all Acquired Intellectual Property (except for such Intellectual Property whose value would be unimpaired in any material respect by disclosure). To the Knowledge of Sellers, no unauthorized disclosure of any such Acquired Intellectual Property has been made.

(e) The Acquired Companies own or have industry standard rights to access and use all IT Systems used to process, store, maintain and operate data, information and functions used in connection with their respective businesses, including systems to operate payroll, accounting, billing/receivables, payables, inventory, asset tracking, customer service and human resources functions. The Acquired Companies have taken commercially reasonable steps in accordance with industry standards to secure the IT Systems from unauthorized access or use by any Person, and to ensure the continued, uninterrupted and error-free operation of the IT Systems.

(f) The IT Systems used in the operation of the businesses of the Acquired Companies are adequate in all material respects for their intended use and for the operation of the Acquired Companies' businesses as currently operated and as currently contemplated to be operated, and are in good working condition (normal wear and tear excepted), and, to the Knowledge of Sellers, are free of all viruses, worms, Trojan horses and other known contaminants and do not contain any bugs, errors or problems of a nature that would materially disrupt their operation or have a material adverse impact on the operation of such IT Systems. There has not been any material malfunction with respect to any such IT Systems during the past five years that has not been remedied or replaced in all material respects.

## **5.12 Material Contracts.**

(a) Section 5.12(a) of the Sellers Disclosure Schedule sets forth a complete and correct list of each of the following Contracts (other than any Permits and any Transaction Documents to which Purchaser is a party), to which any Acquired Company is a party, under which any Acquired Company has any Liability, or by which any Acquired Company or any of its Assets and Properties are bound (all such Contracts required to be listed on Section 5.12(a) of the Sellers Disclosure Schedule, collectively, the "**Material Contracts**"):

(i) any Contract (or series of Contracts) for the provision of services that resulted in, or is expected to result in, revenue or the receipt of consideration by the Acquired Companies, or payments by or liabilities of the Acquired Companies, in either case, in the aggregate in excess of [REDACTED] during the fiscal year most recently ended on or prior to the date of this Agreement or during any 12 month period ending thereafter;

(ii) any Contract containing any exclusivity provision, stand-still provision, non-solicitation provision, or covenant prohibiting or limiting competition, other than restrictions (A) pursuant to "paper barriers", as such term is generally understood in the railroad industry, that are applicable to the Acquired

Companies or (B) that are part of the terms and conditions of any “requirements” or similar agreement under which the Acquired Companies have agreed to procure goods or services exclusively from any person;

(iii) any Contract between or among any Acquired Company, on the one hand, and (A) any Seller, (B) CRRT or (C) any Affiliate or Insider of any Seller [REDACTED] on the other hand;

(iv) any Contract that (A) relates to Indebtedness or guaranty thereof, or (B) grants or creates any Encumbrance upon any material assets and properties of any Acquired Company;

(v) any Contract providing for (A) the assignment, sale, transfer, exchange, or other disposition of any assets and properties owned, leased, licensed, used, or held for use by any Acquired Company with a book value of [REDACTED] in the aggregate or (B) any merger, consolidation, or other business combination;

(vi) any Contract relating to the purchase, exchange, contribution, transfer, or other disposition, directly or indirectly (including by merger), of the assets or business of any third-party that involves (A) all or substantially all of the assets or business of such third-party, (B) consideration payable by the Acquired Companies of [REDACTED] or more in the aggregate or (C) any earn-out or deferred or contingent payment obligations on the part of the any Acquired Company;

(vii) any (x) material management, consulting, independent contractor, agency, brokerage, employment or similar Contract and (y) any Contract providing for severance, retention, change of control or other similar payments;

(viii) any Contract relating to the lending or investing in a third-party of any funds of any Acquired Company;

(ix) any Contract under which any Acquired Company is lessee of, or holds or operates, any personal property owned by any other party calling for (x) payments in excess of [REDACTED] annually (y) generates or is expected to generate, more than [REDACTED] in revenue for the Acquired Companies, or (z) under which it is lessor of or permits any third party to hold or operate any personal property owned or controlled by it;

(x) any Contract with any Material Supplier or Material Customer or any Class I, Class II, or Class III railroad;

(xi) any collective bargaining agreement or Contract with any labor union or any material bonus, commissions, pension, profit sharing, retirement or any other form of deferred compensation plan or any equity purchase, profits interest, hospitalization insurance or similar plans or practice, whether formal or informal;

(xii) any Contract which prohibits any Acquired Company from freely engaging in business anywhere in the world and any Contract which grants any right of first refusal, right of first offer or right of first negotiation (or any other right that would require the disposition of any assets or lines of business of any of the Acquired Companies);

(xiii) any Contract under which any Acquired Company has (i) granted “most favored nation” pricing provisions, (ii) has agreed to purchase a minimum quantity of goods or services or has agreed to purchase goods or services exclusively from a certain party, or (iii) agreed to sell or provided a minimum quantity of goods or services or has agreed to sell or provide goods or services exclusively to a certain party;

(xiv) any Contract with any Government Entity for which (A) all performance and warranty obligations have not been completed, (B) final payment has not been received, or (C) any potential claims or disputes have not been fully and finally resolved and released (collectively, the “Business Government Contracts”); and any other Contract between any Governmental Entity and any Acquired Company;

(xv) any Contract or group of related Contracts which involve commitments to make capital expenditures in excess of ██████ in any consecutive 12 month period after the date hereof; and

(xvi) any Contract relating to any joint venture, partnership, or similar arrangement.

(b) Purchaser has delivered, or provided access in the Data Room to, copies of each written Material Contract (in each case, together with all amendments, waivers or other changes thereto). All Material Contracts are valid, binding, in full force and effect, and enforceable against the applicable Acquired Company and, to the Knowledge of Sellers, the other parties to such Material Contract. Each Acquired Company has made all payments and performed in all material respects the obligations required to be paid or performed by such Acquired Company under any Material Contract to which such Acquired Company is a party or bound. No Acquired Company, or, to the Knowledge of Sellers, any other Person that is a party to any Material Contract, is in breach of or default under such Material Contract in any material respect and no event has occurred which with the passage of time or the giving of notice or both would result in a default or breach thereunder.

(c) Except as described in Section 5.12(c) of the Sellers Disclosure Schedule, each Acquired Company, during the past three years, complied and is currently in compliance in all material respects with all Laws and contractual requirements (including, for avoidance of doubt, flow-down clauses and provisions incorporated by reference) pertaining to the Business Government Contracts and to each Government Bid. With respect to any Government Contract or Government Bid, (i) there is no outstanding claim or dispute involving any Acquired Company, (ii) no Governmental Entity nor any higher-tier contractor or subcontractor has in the past five years notified any Acquired Company in writing of Proceedings or any actual or alleged violation or breach by an Acquired Company of any Law or contractual requirement of such Governmental Contract; (iii) all representations, certifications and disclosure statements made or submitted by or on behalf of any Acquired Company were current, accurate and complete as of the date submitted, and (iv) each Acquired Company has complied with all applicable representations, certifications and disclosure requirements with respect thereto.

**5.13 Insurance.** Section 5.13 of the Sellers Disclosure Schedule sets forth a list of all insurance policies (including the names of the carriers of such policies, the expiration date and all claims pending thereunder) maintained by the Acquired Companies or with respect to which any Acquired Company is a named insured or otherwise the beneficiary of coverage (collectively, the "**Insurance Policies**"). Such Insurance Policies (i) are in full force and effect, (ii) all premiums due on such Insurance Policies have been paid and no Acquired Company is in breach or default, and to Sellers' Knowledge, no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination or modification, under the Insurance Policies and (iii) no notice of cancel or termination has been received, in each case, except as set forth in Section 5.13 of the Sellers Disclosure Schedule. All potential insurance claims for matters arising prior to the Closing for which insurance coverage is (or would have been) available have been timely and properly tendered to the respective insurance carrier by the Acquired Companies. No Acquired Company has been refused any insurance by any insurance carrier to which it has applied for any such insurance or with which it has carried such insurance. During the past five years, no insurance carrier has questioned, denied or disputed coverage of any claim with respect to any Acquired Company (or its assets, properties, products, employees, operations or business) in excess of ██████ individually or ██████ in the aggregate or otherwise cancelled or threatened in writing to cancel any insurance policy which covered any Acquired Company (or its assets, properties, products, employees, operations or business).

**5.14 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in Section 5.14(a) of the Sellers Disclosure Schedule, there are no (and during the past five years have not been any) Proceedings pending or, to the Knowledge of Sellers, threatened in writing against or by any Acquired Company relating to any of its employees, business, properties or assets (or involving or threatened in writing by or against Seller or any Affiliate thereof and relating to the Acquired Companies).

(b) Except as set forth in Section 5.14(b) of the Sellers Disclosure Schedule, there are no (and during the past five years have not been any) outstanding Governmental Orders and no unsatisfied Judgments, penalties, or awards against or affecting any Acquired Company or any of its properties or assets.

**5.15 Compliance with Laws; Permits.**

(a) Except as set forth in Section 5.15(a) of the Sellers Disclosure Schedule, each Acquired Company is, and for the past five years has been, in compliance, in all material respects, with all Laws, Permits and Governmental Orders applicable to it or its business, properties, or assets.

(b) All Permits required for each Acquired Company to lawfully conduct its business have been obtained by it and are valid and in full force and effect. Section 5.15(b) of the Sellers Disclosure Schedule contains a complete and accurate, in all material respects, list of all material Permits held by any Acquired Company and no other material Permits are necessary or required for any Acquired Company to lawfully conduct its business or for any Acquired Company to own, lease or use its assets. No Acquired Company is in default or violation, and no event has occurred which, with notice or lapse of time or both, would constitute a default or violation, in any material respect of any term, condition or provision of any such Permit and there are no facts or circumstances which would form the basis for any such default or violation.

(c) No Proceeding is pending, or to Knowledge of Sellers, threatened in writing, against any Acquired Company alleging any failure to comply with any Law or material Permit or otherwise relating to the suspension, revocation, or modification of any material Permits. No Seller or Acquired Company has received, at any time during the past five years, any notice from any Governmental Entity alleging any violation of, or failure to comply with, any Law and, to the Knowledge of Sellers, no Acquired Company is under investigation with respect to the violation of any Law or Permit applicable to it and there are no facts or circumstances which would form the basis for any such violation.

(d) None of the representations and warranties contained in this Section 5.15 shall be deemed to relate to real property matters (which are governed by Section 5.10(b)), tax matters (which are governed by Section 5.16), employee benefits matters (which are governed by Section 5.17), employment matters (which are governed by Section 5.18), or environmental matters (which are governed by Section 5.19), which sections shall serve as the sole representations and warranties regarding their respective subject matter.

**5.16 Taxes.** Except as set forth in Section 5.16 of the Sellers Disclosure Schedule:

(a) Each Acquired Company has filed (taking into account any valid extensions) all material Tax Returns required to be filed by such Acquired Company, and all such Tax Returns are true and correct in all material respects. All Taxes due from or payable by an Acquired Company (whether or not shown as due and owing on any such Tax Returns) have been paid. Such Acquired Company is not currently the beneficiary of any extension of time within which to file any material Tax Return other than automatic extensions of time to file Tax Returns.

(b) The Parent Company has, at all times, been classified as a partnership under and within the meaning of Section 7701(a)(2) of the Code. Diamondback has at all times been classified as a partnership under and within the meaning of Section 7701(a)(2) of the Code, and will continue to be so classified until [REDACTED] contribute their respective Equity Securities in Diamondback to Parent Company on the Closing Date pursuant to this Agreement. Each of the other Acquired Companies is and always has been disregarded as an entity separate from Parent Company under and within the meaning of Sections 301.7701-2(c)(2) and 301.7701-3(b)(1)(ii) of the Treasury Regulations. No Acquired Company has made an election under Treasury Regulation 301.7701-3 to be treated as an association (taxed as a corporation) for U.S. federal Income Tax purposes.

(c) There are no ongoing actions, suits, claims, or other legal proceedings relating to Taxes by any taxing authority against any Acquired Company. No Acquired Company has received any written (or, to the

Knowledge of Sellers, other) notice of initiation of an audit, investigation, request for information related to Tax matters, or any notice of deficiency or proposed adjustment of any Tax by any Governmental Entity, in each case for any period for which the statute of limitations on assessment of Taxes remains open.

(d) No Acquired Company is a party to any Tax-sharing agreement other than a lease, license, or loan agreement or similar agreement the principal subject matter of which is not Taxes.

(e) All material Taxes that any Acquired Company is obligated to withhold from amounts owing to any employee, creditor, or third-party have been paid or accrued.

(f) Each Person classified or treated by any Acquired Company as an employee or as an independent contractor for any Tax purpose or as to any payment for any period was properly so classified and treated for the applicable Tax purpose or payment and the applicable period.

(g) Sellers have provided to Purchaser true and complete copies of each income, franchise, sales and use, property, payroll and other material Tax Return filed by any Acquired Company for any taxable period ended on or after December 31, 2008.

(h) No Acquired Company has been required to be included in the filing of any Tax Return by or for any Relevant Group, or has been a member of any Relevant Group (other than a group comprised of the Acquired Companies or any of them).

(i) No written claim, and, to the Knowledge of Sellers, no other claim has ever been made by a Governmental Entity in a jurisdiction where any Acquired Company does not file Tax Returns that such Acquired Company may be subject to taxation in or by that jurisdiction.

(j) There are no Encumbrances (other than Permitted Encumbrances) on any of the assets of any Acquired Company that arose in connection with any failure (or alleged failure) to pay any Tax. No power of attorney with respect to any Taxes has been executed or filed with any Governmental Entity with respect to any Acquired Company relating to any Tax Return for which the applicable statute of limitations has not expired.

(k) No Acquired Company has engaged in a transaction that is a listed transaction or a reportable transaction within the meaning of any of Sections 6011, 6111 and 6112 of the Code.

(l) No Acquired Company will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) installment sale or open transaction disposition made on or prior to the Closing Date; (iii) use of the completed contract or percentage of completion method of accounting, (iv) prepaid amount received on or prior to the Closing Date, (v) closing agreement under Section 7121 of the Code (or other comparable agreement) entered into on or prior to the Closing Date, or (vi) cancellation of debt to which Section 108(i) of the Code applies.

(m) None of the assets of any Acquired Company constitutes tax-exempt bond financed property or tax-exempt use property, within the meaning of Section 168 of the Code. No Acquired Company is a party to any "safe harbor lease" that is subject to the provisions of Section 168(f)(8) of the Internal Revenue Code as in effect prior to the Tax Reform Act of 1986.

Notwithstanding anything to the contrary contained in this Agreement, the representations and warranties in this Section 5.16 and in Section 5.17 are the sole representations and warranties of Sellers relating to Tax matters of the Acquired Companies, and refer only to their past activities and are not intended to serve as representations to, or a guarantee of, nor can they be relied upon for, or with respect to, Taxes attributable to any Tax periods (or portions thereof, including the portion of any Straddle Period beginning after the Closing Date) beginning after, or Tax positions taken after, the Closing Date.

## 5.17 Employee Benefit Matters.

(a) Section 5.17(a) of the Sellers Disclosure Schedule contains a list of each benefit, employment, consulting, compensation, incentive, stock option, restricted stock, stock appreciation right, phantom equity or other equity based compensation, deferred compensation, golden parachute, pension, retirement, insurance, retention, profit sharing, bonus, change in control, severance, vacation, disability, medical, hospitalization, cafeteria, dental, life, sick pay or leave, health care reimbursement, dependent care assistance, paid time off, fringe-benefit or other employee benefit Contract, plan, policy, arrangement or program, whether or not reduced to writing, covering one or more Employees, former employees of any Acquired Company, current or former directors of any Acquired Company or the beneficiaries or dependents of any such Persons, and is maintained, sponsored, contributed to, or required to be contributed to by any Acquired Company or any ERISA Affiliate, or under which any Acquired Company has any current or potential liability (each, a "**Benefit Plan**").

(b) Parent Company has delivered, or provided access in the Data Room, to Purchaser true, current and complete copies of all documents that set forth the terms of the Benefit Plans, as well as:

(i) for the two most recent plan years, the annual Form 5500 series annual report, and the schedules thereto, and, if applicable, the reviewed financial statements;

(ii) the most recent summary plan description and any subsequent summary of material modifications required under ERISA or other summary explanation of the Benefit Plan's terms and conditions;

(iii) all insurance policies and administrative service agreements, trust agreements or other funding instruments related to the Benefit Plans; and

(iv) the most recent determination or opinion letter received from the Internal Revenue Service with respect to any Benefit Plan that is intended to be tax-qualified under Section 401 of the Code.

(c) To Knowledge of Sellers, each Benefit Plan complies and has been administered in material compliance with its terms and with all applicable Laws (including ERISA and the Code and the regulations promulgated thereunder). Each Benefit Plan sponsored and maintained by any Acquired Company that is intended to be qualified under Section 401(a) of the Code (a "**Qualified Benefit Plan**") has received a current favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on a current opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to the Knowledge of Sellers, nothing has occurred that would reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable. With respect to each Benefit Plan, all contributions (including all employer contributions and employee salary reduction contributions), distributions, reimbursements and premium payments that are due have been made and all contributions, distributions, reimbursements and premium payments for any period ending on or before the Closing Date that are not yet due have been made or properly accrued in accordance with GAAP.

(d) No Benefit Plan is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is subject to Title IV of ERISA. None of the Acquired Companies or any ERISA Affiliate of any Acquired Company has ever participated in, contributed to, been required to contribute to any, or has any liability or potential liability with respect to a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(e) Other than as required under Section 4980B of the Code, no Benefit Plan provides, and no Acquired Company has any liability to pay for or provide, any benefits or coverage in the nature of health, life, or disability insurance or similar benefits following the retirement or other termination of employment or other

termination of service (other than death benefits when termination occurs upon death) of any current or former employee of or service provider to the Company (including their spouses, family members and domestic partners).

(f) There is no pending or threatened Proceeding relating to a Benefit Plan (other than any routine claim for benefits under the terms of a Benefits).

(g) Except as set forth in Section 5.17(g) of the Sellers Disclosure Schedule, no Benefit Plan exists that would: (i) result in the payment of any money or other property to any Employee or any director or consultant of an Acquired Company; (ii) accelerate the vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Employee or any director or consultant of an Acquired Company, except as a result of any partial plan termination resulting from this Agreement; or (iii) give rise to the payment of any amount that would not be deductible pursuant to Section 280G of the Code, in each case, as a result of the consummation of the Contemplated Transactions.

(h) To Knowledge of Sellers, each Benefit Plan that provides for the deferral of compensation subject to Code Section 409A is in documentary and operational compliance with the Treasury Regulations promulgated with respect to Code Section 409A and no employee, former employee, or individual who has provided services to any Acquired Company is or has been subject to any tax or penalty under Code Section 409A due to a documentary or operational failure thereunder.

#### **5.18 Employment Matters.**

(a) Schedule 5.18(a) of the Sellers Disclosure Schedule sets forth the name, job title and current salary, last year's performance bonus amount and any special bonuses, profit sharing distributions, company-funded 401(k) distributions, or any similar types of incentive arrangements paid last year, and such employee's 2015 bonus opportunity with respect to each employee of each Acquired Company as of the Interim Balance Sheet Date. Schedule 5.18(a) of the Sellers Disclosure Schedule lists any employment agreements with any employee who is listed thereon. There are no outstanding amounts owed to employees or independent contractors of any Acquired Company other than wages and compensation in the Ordinary Course of Business.

(b) No Acquired Company is a party to, or bound by, any collective-bargaining or other agreement with a labor organization representing any of its Employees. Since the date of each Acquired Company's formation, there has not been, nor, to the Knowledge of Sellers, has there been any threat of, (i) any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime, or other similar labor activity or dispute affecting such Acquired Company or (ii) any effort by or on behalf of any labor union or group of employees to organize.

(c) Each Acquired Company has at all times during the past three years complied with and is in compliance with all applicable Laws pertaining to employment and employment practices, terms and conditions of employment, employee classifications, employment discrimination, harassment, retaliation, equal pay, wages, hours of work, reasonable accommodation, disability rights or benefits, immigration (including the Immigration Reform and Control Act of 1986, as amended, and related promulgating regulations), hours, the Fair Labor Standards Act, the payment of minimum wages and overtime rates, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance and occupational safety and health, and are not engaged in any unfair labor practices as defined in the National Labor Relations Act, the Railway Labor Act or other applicable Law (collectively, the "Employment Laws"). Except as set forth in Section 5.18(c) of the Sellers Disclosure Schedule, there are no material Proceedings against any Acquired Company pending, or to the Knowledge of Sellers, threatened in writing to be brought or filed, by or with any Governmental Entity or arbitrator in connection with the employment of any current or former employee of any Acquired Company, including, without limitation, any claim relating to any applicable Employment Laws.

## **5.19 Environmental Matters.**

(a) **Compliance with Environmental Laws.** Except as set forth in Section 5.19(a) of the Sellers Disclosure Schedule: (i) no notice, notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed, and no Proceeding (or any basis therefor) is pending or, to the Knowledge of Sellers, is threatened in writing by any Governmental Entity or other Person relating to any Acquired Company (including its current or former location) and relating to or arising out of any Environmental Law or relating to Hazardous Materials or any Release or threatened Release of, Hazardous Material in violation of, or that may give rise to liability or obligation under, Environmental Laws at any of the Real Property or at any other property currently or formerly owned or leased by any Acquired Company or, to the Knowledge of Sellers, at any disposal or treatment site which received Hazardous Materials generated by any Acquired Company; (ii) the Acquired Companies have complied with and are in compliance with all Environmental Laws and all Environmental Permits necessary for the business of the Acquired Companies; (iii) there are no Liabilities of the Acquired Companies arising under or relating to any Environmental Law or any Hazardous Materials not reflected in the Financial Statements and there is no condition, occurrence, situation or set of circumstances, including the Release or threatened Release of any Hazardous Materials, that reasonably would be expected to result in or be the basis for any such Liabilities; (iv) no Acquired Company is obligated to conduct or pay for, and is not conducting or paying for, any response, remediation or corrective action under any Environmental Law at any location; (v) no Acquired Company is a party to any Judgment that imposes any obligations under any Environmental Law; (vi) there is no Environmental Claim against any Acquired Company pending, and, to the Knowledge of Sellers, no Environmental Claim has been threatened in writing against any Acquired Company; and (vii) to the Knowledge of Sellers, the Real Property contains no underground storage tanks.

(b) **No Investigation.** To the Knowledge of Sellers, there has been no environmental investigation, site assessment, study, audit, test, review or other analysis conducted in relation to the current or prior business of the Acquired Companies or any property or facility now or previously owned or leased by the Acquired Companies that has not been made available to Purchaser.

**5.20 Brokers.** None of the Acquired Companies, nor any of their respective Affiliates, has retained any Person, other than [REDACTED] (the fees and expenses of which will be borne by Sellers), to act as a broker or finder, or agreed or become obligated to pay, or taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee, or similar commission or fee in connection with any of the Contemplated Transactions.

**5.21 Bank Accounts.** Section 5.21 of the Sellers Disclosure Schedule sets forth a correct and complete list of (a) the name and address of each bank with which any Acquired Company has an account or safe deposit box, (b) the name of each Person authorized to draw thereon or have access thereto, and (c) the account number for each bank account of such Acquired Company.

**5.22 Books and Records.** All books, records, and accounts of the Acquired Companies are accurate and are maintained in accordance with all applicable Laws. The corporate (or equivalent) minute books and equity record books of each of the Acquired Companies previously delivered to Purchaser accurately reflect all corporate actions taken by the Acquired Companies.

## **5.23 Customers and Suppliers.**

(a) Section 5.23(a) of the Sellers Disclosure Schedule lists, for each of the 12 month periods ended December 31, 2014 and December 31, 2013: (i) the top 20 customers of the Acquired Companies, taken as a whole, based on the amount of purchase by each such customer during such period and (ii) the top ten suppliers of the Acquired Companies, taken as a whole, based on the amount of purchases by the Acquired Companies from each such supplier for such period. For purposes of this Agreement, "**Material Customer**" shall mean (x) each Person listed or required to be listed on Section 5.23(a) of the Sellers Disclosure Schedule and (y) the Railroad

Partners. For purposes of this Agreement, "**Material Supplier**" shall mean each Person listed, or required to be listed on Section 5.23(a) of the Sellers Disclosure Schedule.

(b) Except as set forth on Section 5.23(b) of the Sellers Disclosure Schedule: (i) no Material Customer (A) has stopped or materially decreased, or has threatened in writing, to stop or materially decrease the rate of purchasing materials, products or services from any Acquired Company or otherwise has materially and adversely modified, or threatened in writing to materially and adversely modify, its relationship with any Acquired Company or (B) is seeking to materially and adversely renegotiate the terms of any Contract, arrangement or historical practice under which any Acquired Company is providing services or selling goods to such Material Customer or otherwise adversely materially and adversely modify its relationship with any Acquired Company; and (ii) Material Supplier (A) has stopped or materially decreased, or has threatened in writing to stop or materially decrease, the rate of supplying materials, products or services to any of the Acquired Companies or otherwise materially and adversely modified, or threatened in writing to materially and adversely modify, its relationship with any Acquired Company or (B) is seeking to materially and adversely renegotiate the terms of any Contact, arrangement or historical practice under which any Acquired Company is receiving services or purchases goods from such Material Supplier or otherwise materially and adversely modify its relationship with any Acquired Company. No Material Supplier is a sole source of supply of any material goods, materials or services used by any Acquired Company.

**5.24 Transactions with Affiliates.** Except as set forth on Section 5.24 of the Sellers Disclosure Schedule, other than as contemplated by this Agreement, the Organizational Documents of any Acquired Company, or employment arrangements entered into in the Ordinary Course of Business:

(a) With respect to any Seller that is (i) an Entity, no manager or member of such Seller and (ii) a natural person, no (A) spouse, parent, children, or sibling of such Seller or (B) estate, trust, partnership or other Entity controlled by the foregoing, is a party to any Contract or transaction with any Acquired Company or has any material interest in any property, real or personal or mixed, tangible or intangible, used in or pertaining to the business of any Acquired Company.

(b) No manager, officer, director, employee, member, stockholder, or Affiliate of any Acquired Company or any Insider or Immediate Family of any of the foregoing, is a party to any Contract or transaction with any Acquired Company or which is pertaining to the business of any Acquired Company or has any interest in any property, real or personal or mixed, tangible or intangible, used in or pertaining to the business of any Acquired Company.

**5.25 No Other Representations and Warranties.** Except for the representations and warranties contained in Article IV and this Article V (including the related portions of the Sellers Disclosure Schedule) and the other Transaction Documents, and except in the case of fraud or intentional misrepresentation, none of Sellers, any Acquired Company, or any other Person has made or makes, and Sellers expressly disclaim, any other express or implied representation or warranty (including with respect to merchantability or relating to title; non-infringement, possession, or quiet enjoyment; or fitness for any particular purpose) or advice, either written or oral, on behalf of Sellers or any Acquired Company, including any representation or warranty or advice as to the accuracy or completeness of any information regarding any Acquired Company furnished or made available to Purchaser and its Representatives (including any information, documents, or materials made available to Purchaser in the Data Room, management presentations, or in any other form in expectation of the Contemplated Transactions) or as to the future revenue, projection, profitability, or success of any Acquired Company, or any representation or warranty arising from statute or otherwise in Law. Each Seller acknowledges and agrees that such Seller has not relied and is not relying upon any representations or warranties other than those contained in Article VI.

**5.26 "As-Is, Where-Is Basis".** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE IV AND THIS ARTICLE V (INCLUDING THE RELATED PORTIONS OF THE SELLERS DISCLOSURE SCHEDULE) OR THE OTHER TRANSACTION DOCUMENTS, EACH SELLER HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMS AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO (A) THE ASSETS OR LIABILITIES OF ANY

ACQUIRED COMPANY, THE GOVERNMENTAL APPROVALS OR ANY OTHER MATTER RELATING TO THE CONTEMPLATED TRANSACTIONS; (B) ANY FINANCIAL PROJECTION OR FORECAST RELATING TO THE BUSINESS; (C) MERCHANTABILITY OR RELATING TO TITLE; (D) NON-INFRINGEMENT, POSSESSION, OR QUIET ENJOYMENT OR THE LIKE; (E) FITNESS FOR ANY PARTICULAR PURPOSE; (F) THE VIABILITY OR LIKELIHOOD OF SUCCESS OF THE BUSINESS; OR (G) ANY OTHER INFORMATION MADE AVAILABLE IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS OR OTHERWISE, BY OVERSIGHT OR OTHERWISE (ORALLY OR IN WRITING), WHETHER PURSUANT TO ANY PRESENTATION MADE BY OR ON BEHALF OF ANY SELLER (INCLUDING ITS AFFILIATES AND REPRESENTATIVES), PURSUANT TO ANY ELECTRONIC OR PHYSICAL DELIVERY OF DOCUMENTATION OR OTHER INFORMATION (INCLUDING ANY OPINION, PROJECTION, STATEMENT, OR ADVICE), OR OTHERWISE, TO PURCHASER, ITS AFFILIATES AND ITS REPRESENTATIVES. IT IS UNDERSTOOD AND AGREED THAT, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, SELLERS ARE SELLING TO PURCHASER, AND PURCHASER SHALL ACCEPT FROM SELLERS, ALL OF THE ACQUIRED COMPANIES (INCLUDING THEIR ASSETS, LIABILITIES, AND PROPERTIES) IN THEIR "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS, IT BEING UNDERSTOOD THAT NOTHING IN THIS SECTION 5.26 SHALL LIMIT ANY PERSON'S RIGHTS OR REMEDIES IN THE CASE OF FRAUD OR INTENTIONAL MISREPRESENTATION AND NOTHING IN THIS SECTION 5.26 SHALL LIMIT ANY PERSON'S RIGHTS OR REMEDIES WITH RESPECT TO ANY BREACH OR INACCURACY OF ANY REPRESENTATION OR WARRANTY CONTAINED HEREIN OR IN ANY OTHER TRANSACTION DOCUMENT.

## **Article VI**

### **Representations and Warranties of Purchaser**

Purchaser represents and warrants to Sellers, as of the date of this Agreement and as of the Closing Date:

**6.1 Organization; Good Standing; Authority.** Purchaser is a limited liability company that was duly organized, is validly existing, and in good standing (if the concept of good standing applies) under the Laws of the state of the state identified in the Preliminary Statements. Purchaser has full limited liability company power and authority to enter into this Agreement, to carry out its obligations hereunder, and to consummate the Contemplated Transactions. The execution and delivery by Purchaser of this Agreement, the performance by Purchaser of its obligations hereunder, and the consummation by Purchaser of the Contemplated Transactions have been duly authorized by all requisite limited liability company action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and (assuming due authorization, execution, and delivery by the other Parties) this Agreement constitutes a legal, valid, and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by the Remedies Exception.

**6.2 No Conflicts; Consents.** The execution, delivery, and performance by Purchaser of this Agreement, and the consummation of the Contemplated Transactions, do not and will not: (a) result in a violation or breach of any provision of the Organizational Documents of Purchaser; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Purchaser; or (c) except as contemplated by Section 6.6, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under, or result in the acceleration of any agreement to which Purchaser is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration, or failure to give notice would not have a material adverse effect on Purchaser's ability to consummate the Contemplated Transactions. No consent, approval, Permit, Governmental Order, declaration, or filing with, or notice to, any Governmental Entity is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement and the consummation of the Contemplated Transactions, except for the STB Notice contemplated by Section 6.6 and for such consents, approvals, Permits, Governmental Orders, declarations, filings, or notices that would not have a material adverse effect on Purchaser's ability to consummate the Contemplated Transactions.

**6.3 Investment Purpose.** Purchaser is acquiring the Acquired Securities solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Purchaser acknowledges that the Acquired Securities are not registered under the Securities Act, as amended, or

any state securities laws, and that the Acquired Securities may not be transferred or sold except pursuant to the registration provisions of the Securities Act, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Purchaser is able to bear the economic risk of holding the Acquired Securities for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

**6.4 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Purchaser.

**6.5 Legal Proceedings.** There are no Proceedings pending or, to Purchaser's knowledge, threatened against Purchaser or any Affiliate of Purchaser that challenge or seek to prevent, enjoin, or otherwise delay the Contemplated Transactions.

**6.6 STB Notice.** Purchaser has filed with the STB a notice of exemption with respect the Contemplated Transactions (the "**STB Notice**") and no further filings, responses or other documentation are required by the STB to consummate the Contemplated Transactions.

**6.7 No Other Representation or Warranties.** Except for the representations and warranties contained in this Article VI and the other Transaction Documents, none of Purchaser or any other Person has made or makes, and Purchaser expressly disclaims, any other express or implied representation or warranty (including with respect to merchantability or relating to title; non-infringement, possession, or quiet enjoyment; or fitness for any particular purpose) or advice, either written or oral, on behalf of Purchaser, including any representation or warranty or advice as to the accuracy or completeness of any information Purchaser furnished or made available to Sellers and their Representatives (including any information, documents, or materials made available to Sellers in management presentations or in any other form in expectation of the Contemplated Transactions) or as to the future revenue, projection, profitability, or success of Purchaser, or any representation or warranty arising from statute or otherwise in Law. Purchaser acknowledges and agrees that it has not relied and is not relying upon any representations or warranties other than those contained in Article IV and Article V (including the related portions of the Sellers Disclosure Schedule) and the other Transaction Documents.

**6.8 Independent Investigation and Non-Reliance.** Purchaser acknowledges (for itself and on behalf of its Affiliates and Representatives) that it has conducted and completed its own investigation, analysis, and evaluation of the Acquired Companies, and that in making its decision to enter into this Agreement and to consummate the Contemplated Transactions it has relied on its own investigation, analysis, and evaluation of the Acquired Companies and the representations and warranties set forth in this Agreement and the other Transaction Documents. Purchaser acknowledges and agrees (for itself and on behalf of its Affiliates and Representatives) that, except for the representations and warranties expressly set forth in Article IV and Article V and the other Transaction Documents and except in the case of fraud or intentional misrepresentation: (a) neither Sellers, the Acquired Companies, nor any of their respective Affiliates (or any other Person) makes, or has made, any representation or warranty relating to Sellers, the Acquired Companies, or any of their assets, properties, businesses, or operations or otherwise in connection with this Agreement or the Contemplated Transactions, and neither Purchaser nor any of its Affiliates or Representatives is relying on any representation or warranty except for those expressly set forth in Article IV and Article V and the other Transaction Documents; (b) no Person has been authorized by Sellers, the Acquired Companies, or any of their respective Affiliates to make any representation or warranty relating to Sellers, the Acquired Companies, or any of their assets, properties, businesses, or operations or otherwise in connection with this Agreement or the Contemplated Transactions, and if made, such representation or warranty must not be relied upon by Purchaser or any of its Affiliates or Representatives as having been authorized by Sellers, the Acquired Companies, or any of their Affiliates (or any other Person); (c) any estimate, projection, prediction, data, financial information, memorandum, presentation, or any other materials or information provided or addressed to Purchaser or any of its Affiliates or Representatives, including any materials or information made available in connection with presentations by Sellers or the Acquired Companies' management, are uncertain and are not and shall not be deemed to be or include representations or warranties unless and to the extent any such

materials or information is the subject of any express representation or warranty set forth Article IV or Article V or the other Transaction Documents; and (d) **ALL PROPERTY CONVEYED PURSUANT TO THIS AGREEMENT WILL BE ON AN "AS-IS," "WHERE-IS," "WITH ALL FAULTS" BASIS AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**

## **Article VII Covenants**

### **7.1 Employees; Benefit Plans.**

(a) During the period commencing at the Closing and ending on the date that is the 12 month anniversary of the Closing (or if earlier, the date of an employee's termination of employment with an Acquired Company), Purchaser shall, and shall cause the applicable Acquired Company to, provide each Employee who remains employed immediately after the Closing ("**Continuing Employee**") with (in each case, unless otherwise provided in any Contract between such Continuing Employee and an Acquired Company and/or Purchaser or its Affiliates): (i) base salary or hourly wages that are no less than the base salary or hourly wages provided by such Acquired Company immediately prior to the Closing; (ii) retirement, healthcare, paid-time-off, welfare, and other benefits that are no less favorable in the aggregate than those provided by such Acquired Company immediately prior to the Closing; and (iii) severance benefits that are no less favorable than the practice, plan or policy in effect for such Continuing Employee immediately prior to the Closing.

(b) Nothing in this Section 7.1 or this Agreement: (i) shall limit the ability of Purchaser or any of its Affiliates to terminate the employment of any employee at any time and for any reason; (ii) constitutes the establishment or modification of, or an amendment to, or is to be construed as establishing, modifying or amending, any benefit or compensation plan, program, policy contract, arrangement or agreement; (iii) shall limit the ability of Purchaser or any of its Affiliates to amend, modify or terminate any benefit or compensation plan, program, policy, arrangement or agreement any time assumed, established, sponsored or maintained by any of them; or (iv) is intended to confer upon any current or former employee or any other Person any right to employment or continued employment or any particular term or condition of employment. Nothing in this Section 7.1 shall be construed to create any third-party beneficiary rights of any kind or nature in any Person.

**7.2 Allocation Schedule.** Prior to the Effective Time, Sellers' Representative shall have delivered to Purchaser a schedule (the "**Allocation Schedule**") that sets forth the following with respect to each Seller:

- (a) such Seller's name;
- (b) such Seller's current mailing address;
- (c) for each Seller, (i) the amount of Equity Securities in Diamondback and (ii) the amount of Equity Securities in each Shortline Subsidiary, in each case held by such Seller immediately prior to the Effective Time;
- (d) the Fully Diluted Proportionate Share of such Seller;
- (e) the Diamondback Proportionate Share of such Seller; and
- (f) for each Seller, the amount of (i) the Diamondback Closing Consideration and (ii) the Shortline Closing Consideration such Seller will be entitled to receive in accordance with Section 2.3. For the avoidance of doubt, Purchaser shall have no liability or obligation with respect to the Allocation Schedule or the making of any payment in accordance with any information contained therein.

### **7.3 D&O Tail Policy; Director and Officer Indemnification.**

(a) If prior to the Closing Sellers have purchased a pre-paid tail-policy for the Acquired Companies, Purchaser will (i) maintain such policy for the period through which the premium has been paid and (ii) apply any proceeds of such policy to any such related claims that may arise thereunder. In the event Purchaser, any Acquired Company, or any of their respective successors or assigns (a) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (b) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Purchaser or such Acquired Company, as the case may be, shall assume all of the obligations set forth in this Section 7.3(a).

(b) Purchaser agrees that all rights to indemnification, advancement of expenses, and exculpation by any Acquired Company now existing in favor of each Person who is now, or has been at any time prior to the Closing Date, an officer or director of such Acquired Company, as provided in the Organizational Documents of such Acquired Company, in each case as in effect on the date of this Agreement, or pursuant to any other agreements in effect on the date of this Agreement and disclosed in Section 5.12(a) of the Sellers Disclosure Schedule, shall survive the Closing Date and shall continue in full force and effect in accordance with their respective terms; *provided* that, notwithstanding anything to the contrary in this Agreement, the Organizational Documents of any Acquired Company or any such other agreement, from and after the Closing, Purchaser, the Acquired Companies and their Affiliates shall have no obligation to indemnify or advance expenses to whom this Section 7.3 applies (or any other Person claiming to be entitled to indemnification or advancement of expenses under any Organizational Documents of any Acquired Company or otherwise) to the extent the claim for indemnification or advancement of expenses arises from or relates to a breach by any Seller of any representation, warranty or covenant under this Agreement or the Transaction Documents.

(c) For a period of six years after the Closing, the obligations of Purchaser and each Acquired Company under this Section 7.3 shall not be terminated or modified in such a manner as to adversely affect any director or officer to whom this Section 7.3 applies without the consent of such affected director or officer (it being expressly agreed that the directors and officers to whom this Section 7.3 applies shall be third-party beneficiaries of this Section 7.3, each of whom may enforce the provisions of this Section 7.3).

### **7.4 Tax Matters.**

(a) Sellers' Representative shall cause each Acquired Company to prepare and file, or cause to be prepared and filed, on a timely basis, (i) all Tax Returns for such Acquired Company for all periods ending on or prior to the Closing Date that are due on or before the Closing Date, and (ii) all Income Tax Returns for the Acquired Companies for all periods ending on or prior to the Closing Date that are due after the Closing Date. Purchaser shall prepare and file, or cause to be prepared and filed, (i) all Tax Returns other than Income Tax Returns for the Acquired Companies for periods ending on or prior to the Closing Date and that are required to be filed after the Closing Date and (ii) all returns for all periods beginning before and ending after the Closing Date (a "Straddle Period"), in each case subject to the provisions of this Section 7.4, and all such Tax Returns shall be prepared in a manner consistent with past custom and practice, subject to applicable Law. Purchaser shall (i) permit Sellers' Representative at least 20 Business Days to review and comment on each of the Tax Returns described in the preceding sentence prior to filing such Tax Returns, (ii) provide Sellers' Representative with all requested accounting records and trial balance records for the preparation of such Tax Returns no later than 45 days prior to filing such Tax Returns, and (iii) shall make any reasonable changes to such Tax Returns requested by Sellers' Representative. Following the Closing, Purchaser will pay to Parent Company or Sellers, as the case may be, the amount of any Tax refund actually received by any Shortline Subsidiary or Diamondback, as the case may be, attributable to any period ending on or prior to the Closing Date.

(b) Following the Closing, Purchaser will pay to Sellers' Representative (for distribution to Sellers), as the case may be, the amount of any Tax refund actually received by any Shortline Subsidiary or Diamondback, as the case may be, attributable to any period ending on or prior to the Closing Date; *provided*, however, that nothing in this Section 7.4(b) shall require that Purchaser pay to Sellers the amount of any refund of

Tax (which shall be for the benefit of Purchaser and the Acquired Companies) that (i) is taken into account as a current asset (or offset to a current Liability) in the Shortline Closing W/C, Diamondback Closing W/C or Closing Deductions or (ii) results from the payment of Taxes made on or after the Closing Date to the extent Sellers have not indemnified and previously paid Purchaser or an Acquired Company for such Taxes.

(c) Apportionment. If any Tax relates to a Straddle Period, the Parties shall use the following conventions: (i) in the case of property Taxes and other ad valorem Taxes imposed on a periodic basis, the amount of Taxes attributable to the portion of the Straddle Period ending on the Closing Date shall be determined by multiplying the Taxes for the entire Straddle Period by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period and (ii) in the case of all other Taxes, the amount of Taxes attributable to the portion of the Straddle Period ending on the Closing Date shall be determined as if a separate return were filed for the Straddle Period ending as of the end of the day on the Closing Date using a "closing of the books methodology"; *provided, however*, that for purposes of clause (ii), exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be apportioned based on the mechanics set forth in clause (i) for periodic Taxes.<sup>1</sup>

(d) Cooperation. Purchaser and Sellers' Representative shall cooperate fully, as and to the extent reasonably requested by another Party, in connection with the preparation and filing of Tax Returns (including amendments thereto) with respect to Taxes. Such cooperation shall include the retention and (upon such other Party's request) the provision of books and records and information reasonably relevant to any such Tax Returns and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Following the Closing, Purchaser shall cause the Acquired Companies to and Sellers shall (i) retain all books and records with respect to Tax matters pertinent to the Acquired Companies relating to any taxable period beginning on or before the Closing Date until three months after the expiration of the statute of limitations of the respective taxable periods, and to abide by all record retention agreements entered into with any Tax Authority, and (ii) give the other Parties reasonable prior, and in no event less than five Business Days, written notice to transferring, destroying, or discarding any such books and records and, if any such other Parties so request, Purchaser and Sellers, as the case may be, shall allow such other Parties to take possession of such books and records.

(e) Amendment of Returns; Tax elections. From and after the Closing, Purchaser shall not, except as required by applicable Law, (i) amend or cause any Acquired Company to amend any Tax Return of any Acquired Company, as applicable, filed with respect to any period ending on or before the Closing Date or any Straddle Period, or (ii) make any Tax election that has retroactive effect to any period ending on or before Closing, in each case without the prior written consent of Sellers' Representative, which may be withheld in the discretion of Sellers' Representative if Sellers' Representative reasonably believe that such amendment or Tax election could have an adverse impact on Sellers.

(f) Purchase Price Allocation. Within the later of (i) 120<sup>2</sup> days following the Closing or (ii) five days following the last to occur of the Shortline Determination Date and the Diamondback Determination date, an allocation of the Total Consideration and the liabilities of the Acquired Companies (plus other relevant items, including any liabilities or other Indebtedness treated as being assumed by Purchaser)) among the assets of the Acquired Companies and any restrictive covenants shall be made as reasonably determined in accordance with Section 1060 of the Code (and any similar provision of state, local or foreign Law, as appropriate) by Stout Risius Ross, Inc. (provided that if Stout Risius Ross, Inc. is unable to serve in such capacity, then The BVA Group LLC shall be used and if the BVA Group LLC is also unable to serve in such capacity then the office of a nationally recognized valuation firm mutually agreed upon by both Purchaser and Sellers' Representative shall be selected) (the "Allocation"). Each Party agrees to (and agrees to cause their respective Affiliates to) (i) be bound by the

■ [REDACTED]

■ [REDACTED]

Allocation and the other provisions of this Section 7.4(f), (ii) report the transactions consummated pursuant to this Agreement in accordance with the Allocation and the other provisions of this Section 7.4(f), and (iii) not take a position inconsistent with the Allocation on any applicable Tax Return, including (as applicable) IRS Form 8594, or in any Tax audit, examination or Proceeding, unless required to do so by a determination of an applicable Governmental Entity that is final and non-appealable. The Parties shall each timely file all required returns, forms, or other filings with the Internal Revenue Service in accordance with the applicable requirements of the Code.

#### **7.5 Expenses; Transfer Taxes.**

(a) Except as otherwise specifically provided herein, all Transaction Expenses shall be paid by the Party incurring such expense; *provided, however*, that (i) the fees and expenses of the Accounting Referee, if applicable, shall be paid or reimbursed in accordance with Section 2.6(g), (ii) all fees and expenses payable to or incurred by Sellers' Representative shall be paid or reimbursed in accordance with Section 9.2; and (iii) Purchaser on the one hand, and Sellers, on the other hand shall split any fees or expenses related to the Escrow Accounts 50%/50%.

(b) All transfer, documentary, sales, use, stamp, registration, and other such Taxes and fees (including any penalties and interest) incurred by any Party in connection with this Agreement (excluding, for the avoidance of doubt, Income Taxes) shall be paid 50% by Purchaser and 50% by Sellers when due, and Purchaser or the Acquired Companies shall file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration, and other Taxes and fees, and, if required by applicable Law, Sellers shall join in the execution of any such Tax Returns and other documentation.

(c) Purchaser shall bear its own costs for the preparation of the STB Notice and any additional related filings and responses to any inquiries or information requests, if applicable, and Purchaser shall be responsible for the payment of any applicable filing fees.

#### **7.6 Further Assurances; No Avoidance.**

(a) From time to time, as and when requested by any Party, each other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such Party may reasonably request to consummate the Contemplated Transactions.

(b) Each Party agrees that such Party will not, through reorganization, consolidation, merger, dissolution, or sale or other transfer of assets, or by any other voluntary act, avoid or seek to avoid the observance or performance of any of the covenants, stipulations, or conditions to be observed or performed in any Transaction Document by such Party.

#### **7.7 Publicity and Confidentiality.**

(a) From and after the Closing, each Seller agrees to, and shall cause its Representatives, Affiliates and its Affiliate's Representatives to: (i) treat and hold as confidential (and not disclose or provide access to any Person to) all information relating to trade secrets, processes, patent applications, product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, details of customer and consultant contracts, operations methods, product development techniques, business acquisition plans, new personnel acquisition plans and all other confidential or proprietary information with respect to the business of any Acquired Company; (ii) in the event that such Seller, Affiliate or Representative becomes (A) required or requested to disclose any such information by any regulatory authority purporting to have jurisdiction over such Seller, Affiliate or Representative (including any self-regulatory authority; (B) required by applicable Laws to disclose any such information; (C) discloses any such information in connection with the exercise of any remedies under this Agreement or any Proceeding relating to this Agreement or the enforcement of rights under this Agreement; promptly (and in no event less than three Business Days after becoming aware of such required disclosure) provide to Purchaser written notice of such requirement so that Purchase or the Acquired



[REDACTED]

(c) Notwithstanding anything to the contrary in this Section 7.9, such Restricted Seller may own, directly or indirectly, solely as a passive investment, (i) securities of any Person traded on any national securities exchange if such Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own five percent (5%) or more of any class of securities of such Person, or (ii) securities of Purchaser or any of its Affiliates.

(d) During the Restricted Period, such Restricted Seller shall not intentionally disrupt, damage, impair or interfere with the business of the Acquired Companies in the Restricted Area, as applicable to such Restricted Seller.

(e) Each Restricted Seller acknowledges and agrees that if such Restricted Seller breaches, or threatens to commit a breach of, any of the provisions of this Section 7.9, Purchaser will have no adequate remedy at law, and accordingly, will have, without the requirement of posting any bond, the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Purchaser under law or in equity:

(i) the right and remedy to have such provision specifically enforced by any court having jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to Purchaser and that money damages may not provide an adequate remedy to Purchaser; and

(ii) the right and remedy to recover from such breaching Restricted Seller all monetary damages suffered by Purchaser as the result of any acts or omissions constituting a breach by such Restricted Seller of this Section 7.9.

(f) In the event that any covenant contained in this Section 7.9 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 7.9 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

(g) In addition to the other covenants contained in this Section 7.9, during the Restricted Period, [REDACTED]

**Article VIII**  
**Closing Deliverables**

**8.1 Sellers Closing Deliveries.** Sellers shall have delivered or cause to be delivered the following to Purchaser at the Closing, each of which shall, unless otherwise indicated, be dated as of the Closing Date:

- (a) the Allocation Schedule;
- (b) evidence of the contribution by each Diamondback Seller of all of such Diamondback Seller's Equity in Diamondback to Parent Company, free and clear of all Encumbrances, other than Permitted Encumbrances, in exchange for the issuance to each such Diamondback Seller of Equity Securities of Parent Company;
- (c) evidence of the transfer, assignment and distribution to each Shortline Seller, free and clear of all Encumbrances, other than Permitted Encumbrances, of all of the issued and outstanding Equity Securities of CRRT;
- (d) a detailed estimate as of the Closing of the Shortline Closing Indebtedness Payoff Amount and the Diamondback Closing Indebtedness Payoff Amount, identifying, in each case, the estimated amount payable to each of the applicable payees as of the Closing Date;
- (e) the applicable deposit account and related wire transfer instructions for each amount described in Section 3.3 to be set forth on Schedule 8.1(e);
- (f) a Securities Assignment of the Equity Securities of each Acquired Company from each applicable Seller, executed by such Seller;
- (g) copies of the Third-Party Consents and Governmental Authorizations set forth in Schedule 8.1(g);
- (h) a statement from each Seller meeting the requirements of Code § 1445 and § 1.1445-2(b)(2) of the Treasury Regulations, to the effect that each such Seller is not a foreign person, along with a duly executed IRS Form W-9 of such Seller;
- (i) a certificate of the chief executive officer of Parent Company dated as of the Closing Date, certifying as to (i) the incumbency and signatures of the officers of Parent Company, the Acquired Companies and Sellers executing each of the Transaction Documents, (ii) copies of each Acquired Company's Organizational Documents, each as in effect on the Closing Date and attached to such certificate, and (iii) copies of all resolutions adopted by Parent Company's managers and members relating to the Contemplated Transactions and attached to such certificate;
- (j) for Parent Company, a certificate of good standing or equivalent issued as of a date not more than ten days before the Closing Date by the Secretary of State or similar official of the state of its

organization or formation and the Secretary of State or similar official of each state where it is qualified to do business as a foreign corporation or other Entity;

(k) for each Acquired Company, a certificate of good standing or equivalent issued as of a date not more than ten days before the Closing Date by the Secretary of State or similar official of the state of its organization or formation and the Secretary of State or similar official of each state where it is required to be qualified to do business as a foreign corporation or other Entity;

(l) resignations, effective as of the Closing Date, of each officer and managing member of each Acquired Company from all positions held by such Person with respect to each Acquired Company, other than those that Purchaser shall have specified in writing at least three Business Days before the Closing;

(m) the original or, as applicable, electronic minute books, membership interest or other Equity Security ledger, and option or similar ledger of each Acquired Company;

(n) joinder agreements to Purchaser's limited liability company agreement from duly executed by each Rollover Seller;

(o) the Escrow Agreement, duly executed by Sellers' Representative; and

(p) all other documents, instruments, or certificates as shall be reasonably requested by Purchaser and as shall be consistent with the terms of this Agreement.

**8.2 Purchaser Closing Deliveries.** Purchaser shall have delivered or cause to be delivered the following to, or as directed by, Sellers' Representative at the Closing, each of which shall, unless otherwise indicated, be dated as of the Closing Date:

(a) the Closing Consideration;

(b) a certificate of the Secretary of Purchaser dated as of the Closing Date, certifying as to (i) the incumbency and signatures of the President and Secretary of Purchaser executing each of the Transaction Documents, (ii) copies of Purchaser's Organizational Documents, each as in effect on the Closing Date and attached to such certificate, (iii) copies of all resolutions adopted by Purchaser's board of managers or similar governing body relating to the Contemplated Transactions and attached to such certificate, and (iv) copies of all resolutions adopted by Purchaser's equityholders relating to the Contemplated Transactions and attached to such certificate;

(c) for Purchaser, a certificate of good standing or equivalent issued as of a date not more than ten days before the Closing Date by the Secretary of State or similar official of the state of its organization or formation and the Secretary of State or similar official of each state where it is qualified to do business as a foreign corporation or other Entity;

(d) Escrow Agreement, duly executed by Purchaser and the Escrow Agent;

(e) evidence of the filing of STB Notice;

(f) evidence of issuance satisfactory to Sellers' Representative of binding coverage under the Representation and Warranty Policy; and

(g) all other documents, instruments, or certificates as shall be reasonably requested by Sellers' Representative and as shall be consistent with the terms of this Agreement.

**Article IX**  
**Sellers' Representative**

**9.1 Authorization of Sellers' Representative.** Sellers' Representative hereby agrees to act on behalf of each Seller and accepts the appointment by each such Seller (upon the execution of this Agreement by such Seller) to act on its behalf, as provided herein. In connection with such appointment, Sellers' Representative shall be authorized and empowered to act, on behalf of each Seller, in connection with and to facilitate the consummation of the Contemplated Transactions, and in connection with the activities to be performed on behalf of Sellers under this Agreement and the Escrow Agreement, for the purposes and with the powers and authority hereinafter set forth in this Section 9.1 and in the Escrow Agreement, which shall include the power and authority on behalf of Sellers:

(a) to execute and deliver the Escrow Agreement and to agree to such amendments or modifications thereto as Sellers' Representative, in its sole and absolute discretion, may deem necessary or desirable;

(b) to execute and deliver such amendments, modifications, waivers, and Consents in connection with this Agreement, the Escrow Agreement, and the consummation of the Contemplated Transactions as Sellers' Representative, in its sole and absolute discretion, may deem necessary or desirable;

(c) to use reasonable best efforts to enforce and protect the rights and interests of Sellers and to enforce and protect the rights and interests of Sellers' Representative arising out of or under or in any manner relating to each Transaction Document and the transactions contemplated thereby and, in connection therewith, to (i) assert or institute any Proceeding; (ii) investigate, defend, contest, or litigate any Proceeding initiated by Purchaser or any other Person against Sellers' Representative, the Indemnification Escrow Amount, or the Adjustment Escrow Amount; (iii) settle or compromise any Proceeding relating to this Agreement or the Escrow Agreement; (iv) assume the defense of any third-party Claim that is the basis of any Proceeding relating to this Agreement or the Escrow Agreement; (v) indemnify, defend, and hold harmless the Escrow Agent under the Escrow Agreement; and (vi) file and prosecute appeals from any Judgment rendered in any of the foregoing Proceedings, it being understood that Sellers' Representative shall not have any obligation to take any such actions, and shall not have any Liability for any failure to take any such actions;

(d) to enforce payment and distribution of any amounts payable to, or for distribution to, Sellers, in each case to the extent of each Seller's respective interests therein;

(e) to cause to be distributed:

(i) out of the Escrow Accounts, any amounts payable to Sellers or Purchaser, as the case may be, under this Agreement and the Escrow Agreement; and

(ii) out of the Indemnification Escrow Account, the amount of any Judgment and Losses awarded in favor of Purchaser or any other Purchaser Indemnified Party, or any amounts payable to Purchaser or any other Purchaser Indemnified Party in respect of any agreement, compromise, or settlement of any claim for Losses agreed to by Sellers' Representative in its sole and absolute discretion;

(f) subject to the provisions of Section 9.7, to make, execute, acknowledge, and deliver all such other agreements, and, in general, to do any and all things and to take any and all action that Sellers' Representative, in its sole and absolute discretion, may consider necessary, proper, or convenient in connection with, or to carry out the activities described in, subsections (a) through (e) of this Section 9.1 and the Contemplated Transactions and all other agreements, documents, or instruments referred to herein or therein or executed in connection herewith or therewith;

(g) to negotiate and settle disputes and controversies with Purchaser, in Sellers' Representative's sole and absolute discretion; and

(h) to cause to be withheld from any cash payment or distribution of the Total Consideration to Sellers, on and after the date hereof, the amount of any fee payable to Sellers' Representative and any reasonable cost and expense incurred, directly or indirectly, by Sellers' Representative in connection with its obligations hereunder or relating to the Contemplated Transactions (including pursuant to any Proceedings or other legal actions pursuant to Section 11.10).

**9.2 Payment of Expenses.** In connection with the performance of its obligations hereunder and under the Escrow Agreement, each Seller acknowledges and agrees that (a) Sellers' Representative shall have the right at any time and from time to time to select and engage attorneys, accountants, investment bankers, advisors and consultants, to obtain such other professional and expert assistance (in all cases as reasonably necessary), and maintain such records, as reasonably necessary or desirable, and to incur other reasonable out-of-pocket expenses and (b) the fees and expenses of such advisors, and all other fees, costs, and expenses incurred by Sellers' Representative hereunder, shall be paid by each Seller in accordance with such Seller's Fully Diluted Proportionate Share; *provided, however*, Sellers' Representative will first pay such amounts out of distributions from the Escrow Accounts to Sellers and, thereafter, shall be entitled to seek payment for such fees and expenses directly from Sellers.

**9.3 Proportionate Share; Disbursements.**

(a) For the avoidance of doubt, Diamondback Sellers shall have no claim or right to the Shortline Total Consideration or any portion thereof held by Sellers' Representative.

(b) All other payments to Sellers and all sums, proceeds, and other property held by Sellers' Representative on behalf of Sellers, if any, shall be allocated among Sellers in accordance with their respective Fully Diluted Proportionate Shares unless otherwise provided expressly herein.

(c) All monies or other proceeds received by Sellers' Representative shall be distributed by Sellers' Representative as promptly as practicable thereafter to Sellers in accordance with their respective Fully Diluted Proportionate Shares unless otherwise provided expressly herein.

**9.4 Compensation; Exculpation.**

(a) Each Seller acknowledges and agrees that, in dealing with this Agreement, the Escrow Agreement and any other Transaction Documents, and instruments, agreements, or documents relating thereto, and in exercising or failing to exercise any or all of the powers conferred upon Sellers' Representative hereunder, (i) Sellers' Representative assumes and shall incur no Liability whatsoever to any Seller by reason of any error in judgment or other act or omission performed or omitted hereunder or in connection with this Agreement, the Escrow Agreement or any such other agreement, except in the case of Sellers' Representative's bad-faith willful misconduct and (ii) Sellers' Representative shall be entitled to rely on the advice of counsel, public accountants, or other independent experts experienced in the matter at issue, and any error in judgment or other act or omission of Sellers' Representative (which is not the result of bad-faith willful misconduct) whether or not pursuant to such advice shall in no event subject Sellers' Representative to Liability to Sellers.

(b) All of the indemnities, immunities, and powers granted to Sellers' Representative under this Agreement or the Escrow Agreement shall survive the Closing.

(c) Sellers, in accordance with their respective Fully Diluted Proportionate Shares, shall (i) indemnify Sellers' Representative from and against all Losses incurred by Sellers' Representative in connection with its performance of its duties and obligations as Sellers' Representative, in each case, as such Losses are incurred, except to the extent it is finally adjudicated that Sellers' Representative engaged in bad-faith willful misconduct, in which case, Sellers' Representative will reimburse Sellers the amount of such indemnified Losses attributable to such bad-faith willful misconduct, and (ii) pay Sellers' Representative a commercially reasonable fee and reimburse Sellers' Representative for any out-of-pocket expenses incurred by Sellers' Representative, in each case, arising out of the performance of its duties and obligations hereunder. Sellers' Representative may pay

such amounts from amounts otherwise payable to Sellers hereunder. If not paid directly to Sellers' Representative by Sellers, any such losses, liabilities, or expenses may be recovered by Sellers' Representative from the funds in the Escrow Accounts otherwise distributable to Sellers pursuant to the terms hereof and the Escrow Agreement at the time of distribution; *provided* that while this Section 9.4(c) allows Sellers' Representative to be paid from the Escrow Accounts, this does not relieve Sellers from their obligation to promptly pay such losses, liabilities, or expenses, nor does it prevent Sellers' Representative from seeking any remedies available to it at Law or otherwise.

**9.5 Successor Sellers' Representative.** Upon the dissolution or resignation of Sellers' Representative, a successor shall be appointed by Seller with the largest Fully Diluted Proportionate Share.

**9.6 Power of Attorney.** Upon the execution by each Seller of this Agreement, such Seller, on and after the date of this Agreement, hereby appoints Sellers' Representative as such Seller's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, in such Seller's name, place, and stead, in any and all capacities, in connection with the Contemplated Transactions, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite, necessary, or desirable to be done in connection with any of the Contemplated Transactions, as fully to all intents and purposes as such holder might or could do in person. **THE POWER OF ATTORNEY GRANTED IN ACCORDANCE WITH THIS SECTION 9.6: (a) IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE; (b) MAY BE DELEGATED BY SELLERS' REPRESENTATIVE; AND (c) SHALL SURVIVE THE DEATH, DISSOLUTION, OR INCAPACITY OF ANY SUCH SELLER.**

**9.7 Certain Limitations.** Notwithstanding anything in this Agreement to the contrary, except as required by Law, Sellers' Representative shall not (a) agree to any amendment, modification, or waiver of, or consent to, the provisions of this Agreement or the Escrow Agreement that materially and adversely (i) alters or changes the amount or kind of consideration to be received at the Closing in exchange for any of the Acquired Securities; (ii) alters any of the indemnification obligations of Sellers hereunder except as otherwise provided in this Agreement or the Escrow Agreement; or (iii) disproportionately (in relation to the other Sellers) affects the rights or obligations of any Seller, in any case without the prior written consent of such affected Seller or (b) distribute any confidential information of Purchaser or any Acquired Company, including the Disclosure Schedules to this Agreement, to any Seller without the prior written consent of Purchaser. The provisions of this Article IX shall in no way impose any obligations on Purchaser or its Affiliates. In particular, notwithstanding any notice received by Purchaser to the contrary, Purchaser (i) shall be fully protected in relying upon and shall be entitled to rely upon, and shall have no liability to any Seller or other Person with respect to, actions, decisions and determinations of Sellers' Representative and (ii) shall be entitled to assume that all actions, decisions and determinations of Sellers' Representative are fully authorized by all of Sellers.

**9.8 Correspondence.** Each Seller hereby agrees to receive correspondence from Sellers' Representative, including in electronic form.

**Article X**  
**Indemnification**

**10.1 Survival.** [REDACTED]

[REDACTED]

**10.2 Indemnification.**

■ [REDACTED]

**10.3 Provisions related to Indemnification.**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**10.4 Claim Notice and Defense of Third-Party Claims.**

(a) Notice of Direct Claims. As soon as is reasonably practicable after a Purchaser Indemnified Party or a Seller Indemnified Party (as applicable, an "**Indemnified Person**") becomes aware of any event or condition that could reasonably be expected to result in a Loss with respect to which Purchaser or any Seller, in each case as the case may be, an "**Indemnifying Person**," may become obligated to indemnify, defend, compensate, or reimburse any Indemnified Person pursuant to this Article X (a "**Claim**"), such Indemnified Person will give notice of such Claim (a "**Direct Claim Notice**") (i) if such Indemnified Person is a Purchaser Indemnified Party, to Sellers' Representative, or (ii) if such Indemnified Person is a Seller Indemnified Party, to Purchaser. A Direct Claim Notice must describe the Claim in reasonable detail and must indicate the amount (estimated, if necessary and to the extent feasible) of the Loss that has been or may be suffered by the Indemnified Person (the "**Claimed Amount**").

(b) Notice of Third-Party Claims. In the event of the assertion of any Claim by any third-party Person with respect to which an Indemnifying Person may become obligated to indemnify, defend, compensate, or reimburse any Indemnified Person pursuant to this Article X, or the commencement by any third-party Person of any Proceeding (whether against a Party or any other Indemnified Person) with respect to which

any Indemnifying Person may become obligated to indemnify, defend, compensate, or reimburse any Indemnified Person pursuant to this Article X (each, a “Third-Party Claim” and together with a Direct Claim Notice, a “Claim Notice”), the Indemnified Person, if having notice of such Third-Party Claim, shall provide the Indemnifying Person with prompt written notice of such Third-Party Claim (a “Third-Party Claim Notice”).

(c) Failure to Deliver Notice. The failure to provide such Claim Notice shall not affect the rights of any Indemnified Person to receive indemnification generally for Losses to the extent that the Indemnifying Person’s rights in relation to such Claim or Third-Party Claim are not materially prejudiced, but in no event shall the Indemnifying Person be liable for, and the costs of, Losses that result from a delay in providing a Claim Notice.

(d) Response to Claim Notice. During the 30 day period commencing upon the delivery to the Indemnifying Person of a Claim Notice (the “Dispute Period”), the Indemnifying Person shall deliver to the Indemnified Person a written response (the “Response Notice”) in which the Indemnifying Person: (i) agrees that the full Claimed Amount is owed to the Indemnified Person; (ii) agrees, with specificity as to the reasons and amount, that part (but not all) of the Claimed Amount (the “Agreed Amount”) is owed to the Indemnified Person; or (iii) asserts that no part of the Claimed Amount is owed to the Indemnified Person. Any part (or all) of the Claimed Amount that is not agreed by the Indemnifying Person to be owing to the Indemnified Person pursuant to the Response Notice shall be referred to as the “Contested Amount.” If a Response Notice is not timely received by the Indemnified Person prior to 5:00 p.m., New York, New York, time on the 30<sup>th</sup> day of the Dispute Period, then the Indemnifying Person shall be conclusively deemed to have agreed that the full Claimed Amount is owed to the Indemnified Person.

(e) Payment of Full Claimed Amount. If (i) the Indemnifying Person delivers a timely Response Notice agreeing that the full Claimed Amount is owed to the Indemnified Person, or (ii) the Indemnifying Person does not deliver a timely Response Notice during the Dispute Period, then, subject to the limitations of this Article X, (A) if a Purchaser Indemnified Party is the Indemnified Person, Purchaser and Sellers’ Representative shall jointly instruct the Escrow Agent, if the Indemnification Escrow Account has not been exhausted, to disburse to the Indemnified Person from the Indemnification Escrow Account cash in an amount equal to the Claimed Amount, with Purchaser to settle any amount of the Claimed Amount that remains unpaid due to any deficiency in the Indemnification Escrow Account pursuant to Section 10.3(b); or (B) Purchaser, if a Seller Indemnified Party is the Indemnified Person, shall pay to such Indemnified Person cash in an amount equal to the Claimed Amount.

(f) Payment of Less Than Full Claimed Amount. If the Indemnifying Person delivers a timely Response Notice agreeing that less than the full Claimed Amount is owed to the Indemnified Person, then, subject to the limitations of this Article X, (i) if a Purchaser Indemnified Party is the Indemnified Person, Purchaser and Sellers’ Representative shall jointly instruct the Escrow Agent, in complete satisfaction of the Agreed Amount, if the Indemnification Escrow Account has not been exhausted, to disburse to the Indemnified Person from the Indemnification Escrow Account cash in an amount equal to the Agreed Amount, with Purchaser to settle any amount of the Agreed Amount that remains unpaid due to any deficiency in the Indemnification Escrow Account pursuant to Section 10.3(b); or (ii) Purchaser, if a Seller Indemnified Party is the Indemnified Person, shall pay to such Indemnified Person cash in an amount equal to the Agreed Amount.

(g) Settlement of Contested Amount. If the Indemnifying Person delivers a timely Response Notice indicating that there is a Contested Amount, the Indemnifying Person and the Indemnified Person shall attempt in good faith to resolve the dispute related to the Contested Amount. If the Indemnifying Person and the Indemnified Person resolve such dispute as to all or a portion of the Contested Amount (which mutually resolved amount shall then become an “Agreed Amount”), then the Indemnifying Person and the Indemnified Person shall execute a written settlement agreement, and then, subject to the limitations of this Article X, (i) if a Purchaser Indemnified Party is the Indemnified Person, Purchaser and Sellers’ Representative shall jointly instruct the Escrow Agent, in complete satisfaction of the Agreed Amount, if the Indemnification Escrow Account has not been exhausted, to disburse to the Indemnified Person from the Indemnification Escrow Account cash in an amount equal to the Agreed Amount, with Purchaser to settle any amount of the Agreed Amount that remains

unpaid due to any deficiency in the Indemnification Escrow Account pursuant to Section 10.3(b); or (ii) Purchaser, if a Seller Indemnified Party is the Indemnified Person, shall pay to such Indemnified Person cash in an amount equal to the Agreed Amount.

(h) Failure to Settle Contested Amount. If the Indemnifying Person and the Indemnified Person are unable to resolve any part of the dispute relating to any Contested Amount during the 30 day period commencing upon the delivery of the Response Notice, then with respect to the remaining Contested Amount, either the Indemnified Person or the Indemnifying Person (with Purchaser or Sellers' Representative as the sole authorized agents, of the parties, as the case may be) may resort to other legal remedies, subject to the limitations and procedures set forth in Article X and Article XI of this Agreement, and the remaining Contested Amount shall only be payable upon receiving an executed settlement agreement or a certified copy of a final non-appealable binding Judgment of a court of competent jurisdiction (a "Final Award"), and, subject to the limitations of this Article X, (i) if a Purchaser Indemnified Party is the Indemnified Person, Purchaser and Sellers' Representative shall jointly instruct the Escrow Agent, in complete satisfaction of the amount of the Final Award if the Indemnification Escrow Account has not been exhausted, to disburse to the Indemnified Person from the Indemnification Escrow Account cash in an amount equal to the amount of the Final Award, with Purchaser to settle any amount of the Final Award that remains unpaid due to any deficiency in the Indemnification Escrow Account pursuant to Section 10.3(b); or (ii) Purchaser, if a Seller Indemnified Party is the Indemnified Person, shall pay to such Indemnified Person cash in an amount equal to the amount of the Final Award.

(i) Defense of Third-Party Claims. The Indemnifying Person, shall be entitled to conduct the defense of any Third-Party Claim on the terms set forth in Section 10.4(j) or Section 10.4(l), as applicable, provided that the Indemnifying Person notifies the Indemnified Person in writing within ten days following the delivery of the Third-Party Claim Notice (the "Defense Election Period") of the Indemnifying Person's intent to conduct such defense. The Indemnified Person shall be entitled to conduct the defense of any Third-Party Claim on the terms set forth in Section 10.4(l) provided that Indemnifying Person has not elected to conduct the defense pursuant to the preceding sentence and the Indemnified Person notifies the Indemnifying Person within ten days following the expiration of the Defense Election Period of its intent to conduct such defense.

(j) If the Indemnified Person does not deliver such written notice of its intent to conduct the defense of such Third-Party Claim pursuant to Section 10.4(i), or the Indemnifying Person does deliver such written notice of its intent to conduct the defense of such Third-Party Claim pursuant to Section 10.4(i), the Indemnifying Person shall assume the defense of such Third-Party Claim. Subject to Section 10.4(k):

(i) the Indemnifying Person shall proceed to defend such Third-Party Claim in a diligent manner with counsel reasonably satisfactory to the Indemnified Person at the sole expense of the Indemnifying Person, subject to any applicable limitations in this Article X;

(ii) the Indemnified Person shall make available to the Indemnifying Person any non-privileged documents and materials in the possession of the Indemnified Person that may be necessary to the defense of such Third-Party Claim;

(iii) the Indemnifying Person shall keep the Indemnified Person informed of all material developments and events relating to such Third-Party Claim;

(iv) the Indemnified Person shall have the right to participate, at its sole cost and expense, in the defense of such Third-Party Claim; and

(v) the Indemnifying Person shall not settle, adjust, or compromise such Third-Party Claim without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld or delayed.

(k) If Sellers are the Indemnifying Person, assume the defense of such Proceeding under Section 10.4(j), and if, subject to notice and ten days to cure where cure is reasonable and not materially injurious

to the Indemnified Person, Sellers have an uncured breach any of their obligations under Section 10.4(j), then Purchaser may, at its election, proceed with the defense of such Third-Party Claim on its own.

(l) If the Indemnified Person proceeds with the defense of any Third-Party Claim pursuant to Section 10.4(i) or Section 10.4(k):

(i) all reasonable expenses relating to the defense of such Third-Party Claim (whether or not incurred by the Indemnified Person) to the extent they are indemnifiable Losses pursuant to this Article X shall be borne and paid exclusively by the Indemnifying Person, subject to any applicable limitations in this Article X;

(ii) the Indemnified Person shall proceed to defend such Third-Party Claim in a commercially reasonable, diligent manner;

(iii) the Indemnifying Person shall make available to the Indemnified Person any documents and materials in the possession or control of the Indemnifying Person that may be necessary to the defense of such Third-Party Claim;

(iv) the Indemnified Person shall keep the Indemnifying Person informed of all material developments and events relating to such Third-Party Claim; and

(v) the Indemnified Person shall not settle, adjust or compromise such Third-Party Claim without the prior written consent of the Indemnifying Person, which consent shall not be unreasonably withheld or delayed.

**10.5 Escrow Arrangements.** Subject to the procedures and limitations set forth in this Article X, the funds on deposit in the Indemnification Escrow Account shall be released on the [REDACTED] and the administration of their release shall be subject to the terms and conditions of the Escrow Agreement.

**10.6 Payment or Reimbursement of Losses.** Subject to the limitations of this Article X, payment or reimbursement for Losses incurred by an Indemnified Person shall be made by or on behalf of the Indemnifying Person within fifteen Business Days of the final resolution of any related claim for indemnification under the terms of this Agreement. Any final and irrevocable payment by the Escrow Agent to Purchaser from the Indemnification Escrow Account under the terms of the Escrow Agreement with respect to a claim for indemnification by any Purchaser Indemnified Party under this Article X shall be deemed a payment by Sellers to such Purchaser Indemnified Party.

**10.7 Exclusive Remedy.** The provisions of this Article X shall be the sole and exclusive remedy for the Parties for any misrepresentation or breach of any representation, warranty, covenant, agreement or other provision contained in this Agreement. Notwithstanding the foregoing sentence, nothing in this Agreement, including the limitations provided in Section 10.3, shall (i) apply to any claims brought pursuant to an act of fraud; (ii) limit the rights or remedies expressly provided for in any Transaction Document or rights or remedies which, as a matter of applicable Law or public policy, cannot be limited or waived; (iii) be deemed to prohibit or limit any Party's right at any time to seek injunctive or equitable relief for the failure of any other Party to perform any covenant or agreement contained herein (subject to the limitations with respect thereto set forth in Section 11.15); or (iv) limit any rights or remedies of Purchaser under or with respect to the Representation and Warranty Policy. Sellers and Purchaser hereby waive and release any and all tort claims and causes of action that may be based upon, arise out of or relate to this Agreement or the Contemplated Transactions, or the negotiation, execution, or performance of this Agreement (including any tort claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement). No Person indemnified under this Article X shall be entitled to recover any Losses relating to any matter arising under one provision of this Agreement to the extent that any Person indemnified under this Article X had already recovered the same Losses with respect to such matter pursuant to other provisions of this Agreement.



and nothing in this Agreement modifies or shall be deemed to modify the ability of any Benefit Plan to be amended or terminated in accordance with its terms

**11.5 Notices.** All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, sent by electronic mail, sent by nationally recognized overnight courier, or mailed by registered or certified mail (return-receipt requested), postage prepaid, to the Parties at the addresses set forth in Appendix B or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance with this Section, which shall not constitute an amendment for the purpose of Section 11.8. Any such notice or communication shall be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery; (b) in the case of electronic mail, on the date of transmittal when transmitted by email prior to 5:00 p.m. New York, New York time on a Business Day (and when sent outside of such hours at 9:00 a.m. New York, New York time on the next Business Day); (c) in the case of a nationally recognized overnight courier in circumstances under which such courier guarantees next Business Day delivery, on the next Business Day after the date sent; and (d) in the case of mailing, on the third Business Day after that on which the piece of mail containing such communication is posted.

**11.6 Counterparts.** This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or by electronic image scan transmission in .pdf shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronic image scan transmission in .pdf shall be deemed to be their original signatures for all purposes. Any Party that delivers an executed counterpart signature page by facsimile or by electronic image scan transmission in .pdf shall promptly thereafter deliver a manually executed counterpart signature page to each of the other Parties; *provided, however*, that the failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

**11.7 Entire Agreement; Exclusivity of Agreement.** This Agreement and the other Transaction Documents, along with the Exhibits, Schedules, and the Sellers Disclosure Schedule hereto and thereto, contain the entire agreement and understanding among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Except in the case of fraud arising from any breach of any representations, warranties, or covenants made in this Agreement or the Transaction Documents, respectively, none of the Parties shall be liable or bound to any other Party in any manner by any representations, warranties, or covenants relating to such subject matter except as specifically set forth in this Agreement and the Transaction Documents. The Parties have voluntarily agreed to define their rights, liabilities, and obligations respecting the subject matter of this Agreement exclusively in contract pursuant to the express terms and provisions of this Agreement and the other Transaction Documents; and the Parties expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Agreement or the other Transaction Documents. Furthermore, the Parties each hereby acknowledge that this Agreement embodies the justifiable expectations of sophisticated parties derived from arm's length negotiations; all Parties specifically acknowledge that no Party has any special relationship with another party that would justify any expectation beyond that of any ordinary buyer and an ordinary seller in an arm's length transaction.

**11.8 Amendments.** This Agreement may not be amended except pursuant to the written agreement of Purchaser and Sellers' Representative and any attempted amendment to the contrary shall be void *ab initio*; *provided that* Section 11.4 (No Third-Party Beneficiaries), Section 11.7 (Entire Agreement), this Section 11.8, Section 11.12 (No Third-Party Liability) and Section 11.18 (Financing-Related Party Arrangements) shall not be amended or modified in a manner materially adverse to the Financing Sources without also obtaining the prior written consent of such Financing Sources.

**11.9 Severability.** If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any

other provision hereof (or the remaining portion thereof) or the application of such provision to any other Persons or circumstances.

#### **11.10 Governing Law; Venue.**

(a) Governing Law. This Agreement, and all claims of causes of action (whether in contract or tort) that may be based upon, arise out of, or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed solely by the internal laws of the State of Delaware, without regard to the conflict-of-law principles thereof.

(b) Venue and Jurisdiction. Except as provided in Section 11.15 or Section 11.18, any Proceeding or other legal action relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in the Court of Chancery or federal court located in Wilmington, Delaware. Each Party to this Agreement:

(i) expressly and irrevocably consents and submits to the exclusive jurisdiction of the Court of Chancery and federal court located in Wilmington, Delaware (and each appellate court located in the State of Delaware) in connection with any such Proceeding;

(ii) agrees that the Court of Chancery and federal court located in Wilmington, Delaware, shall be deemed to be a convenient forum; and

(iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such Proceeding commenced in the Court of Chancery or federal court located in Wilmington, Delaware, any claim that such Party is not subject personally to the jurisdiction of such court, that such Proceeding has been brought in an inconvenient forum, that the venue of such Proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

**11.11 Waiver of Jury Trial.** BECAUSE (A) DISPUTES ARISING IN CONNECTION WITH ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS ARE LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, (B) SUCH DISPUTES WILL BE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND (C) PURCHASER AND SELLERS WHICH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), PURCHASER AND SELLERS DESIRE THAT THEIR DISPUTES BY RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, AND UNDERSTANDING THEY ARE WAIVING A CONSTITUTIONAL RIGHT, PURCHASER AND EACH SELLER HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS.

**11.12 No Third-Party Liability.** This Agreement may only be enforced against the Parties. All claims or cause of action (whether in contract or tort) that may be based upon, arise out of, or related to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as Parties; and no officer, director, equityholder, employee, or Affiliate of any Party (including any person negotiating or executing this Agreement on behalf of a Party) shall have any liability or obligation with respect to this Agreement or with respect to any claim or cause of action (whether in contract or tort) that may arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including a representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement).

**11.13 Waiver in Writing.** No failure on the part of any Person to exercise any power, right, privilege, or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege, or remedy under this Agreement, shall operate as a waiver of such power, right, privilege, or remedy; and no single or partial exercise of any such power, right, privilege, or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege, or remedy. No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege, or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**11.14 Extension; Waiver.** At any time prior to the Effective Time, the Parties, by action taken or authorized by their respective boards of directors, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained in this Agreement or (c) waive compliance by the other Party with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**11.15 Specific Performance.** The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, such breach could not be adequately compensated by monetary damages and the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Purchaser would have entered into this Agreement. Accordingly, each of the Parties shall be entitled to specific performance of the terms of this Agreement, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any federal or Court of Chancery in the State of Delaware, this being in addition to any other remedy to which such Party is entitled at law or in equity. If any legal action or other Proceeding relating to this Agreement or the enforcement of any provision of this Agreement is brought against any Party to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees. Each of the Parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any Law to post security as a prerequisite to obtaining equitable relief.

**11.16 Construction.**

(a) Each Party acknowledges that it has participated in the drafting of this Agreement, and, as a result, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

(b) The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. Exceptions or qualifications to any covenant, representation, or warranty contained herein shall not be construed as exceptions or qualifications to any other covenant, warranty, or representation. If there is any inconsistency between the statements in this Agreement and those in the Sellers Disclosure Schedule (other than an exception expressly set forth as such in the Sellers Disclosure Schedule with respect to a specifically identified representation or warranty), the statements in this Agreement will control.

(c) The headings contained in this Agreement; any Appendix, Exhibit, or Schedule attached to this Agreement; the Sellers Disclosure Schedule; and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Appendices, Exhibits, and Schedules annexed to this Agreement or referred to in this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full in this Agreement. Any capitalized terms used in any Appendix, Exhibit, Schedule, or the Sellers Disclosure Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

**11.17 Legal Representation.** Bryan Cave LLP has acted as counsel for Parent Company and Sellers in connection with the negotiation of this Agreement and the other documents and agreements to be executed pursuant to the terms of this Agreement and the consummation of the transactions contemplated hereby and thereby (the "**Transaction Engagement**") and in that connection not as counsel for any other Person, including Purchaser or its Affiliates. Only Parent Company shall be considered a client of Bryan Cave LLP in the Transaction Engagement. The Parties acknowledge the community of interest between the Parent Company and Sellers and their Affiliates that are not clients in the Transaction Engagement in light of the fact that Sellers hold all of the Acquired Securities. Accordingly, notwithstanding that the clients are or were clients in the Transaction Engagement, upon and after the Closing, all communications between Sellers, Sellers' Representative, the Acquired Companies and Bryan Cave LLP in the course of the Transaction Engagement that relate to the negotiation and consummation of the Contemplated Transactions shall be deemed to be attorney-client confidences that belong solely to Sellers and Sellers' Representative and not any Acquired Company. Purchaser shall not have access to any such communications, or to the files of Bryan Cave LLP relating to such communications, whether or not the Closing shall have occurred. Without limiting the generality of the foregoing, upon and after the Closing, (i) Sellers and Sellers' Representative shall be the sole holders of the attorney-client privilege with respect to the Transaction Engagement, and none of the Acquired Companies, Purchaser or any of their respective post-closing Affiliates shall be a holder thereof, (ii) to the extent that files of Bryan Cave LLP in respect of the Transaction Engagement constitute property of the clients only Sellers or Sellers' Representative shall hold such property rights, and (iii) Bryan Cave LLP shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to any Acquired Company, Purchaser or any of their respective Affiliates by reason of any attorney-client relationship as between Bryan Cave LLP and any Acquired Company as a result of the Transaction Engagement. Each Party hereby agrees, on its own behalf and on behalf of its directors, members, partners, officers, employees, and Affiliates, that Bryan Cave LLP may retain a copy of the information made available in the Data Room related to the Transaction Engagement and that, following consummation of the Contemplated Transactions, Bryan Cave LLP (or any successor) may serve as counsel to Sellers and their Affiliates (individually and collectively, the "**Seller Group**") or any director, member, partner, officer, employee, or Affiliate of the Seller Group, in connection with any Proceeding or obligation arising out of or relating to this Agreement or the Contemplated Transactions notwithstanding such representation, and each Party hereby consents thereto and waives any conflict of interest arising therefrom and each Party shall cause any Affiliate thereof to consent to waive any conflict of interest arising from such representation. Each of the Parties acknowledges and agrees that (a) such consent and waiver is voluntary, has been carefully considered and the Parties have consulted with counsel or been advised they should do so in this connection; and (b) the Seller Group shall have exclusive ownership and control over all such attorney-client privilege matters and materials related to the Transaction Engagement, including such communications regarding the Contemplated Transactions.

**11.18 Financing-Related Party Arrangements**

(a) Notwithstanding anything to the contrary contained herein, each of the Parties agrees (i) that any claim, cross-claim, suit, action or Proceeding of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, involving any Financing Sources that arises out of or relates to this Agreement, any related documentation or the transactions contemplated hereby or thereby, the transactions contemplated by any financing or any commitment letter of any financing or the performance of services thereunder shall be subject to the exclusive jurisdiction of a state or federal court sitting in the Borough of Manhattan within the City of New York, New York and the appellate courts thereof, (ii) not to bring or permit any of their Affiliates to bring or support anyone else in bringing any such claim, suit, action or proceeding in any court other than a state or federal court sitting in the Borough of Manhattan within the City of New York, New York, and (iii) TO IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY SUCH CLAIM, SUIT, ACTION OR PROCEEDING.

(b) Notwithstanding anything to the contrary contained herein, each Seller agrees on behalf of itself and its Affiliates that none of the Financing Sources shall have any liability or obligation to any Seller or any of its Affiliates relating to this Agreement, any related documentation or any of the transactions contemplated

herein or therein (including any financing). This Section 11.18 is intended to benefit and may be enforced by any Financing Source and shall be binding on all successors and assigns of any Seller.

**[The remainder of page intentionally left blank.]**

The Parties have duly executed this Agreement as of the date first written above.

**PURCHASER:**

**Regional Rail Holdings, LLC**

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

Name:

Title:

**PARENT COMPANY:**

**Regional Rail, LLC**

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

Name:

Title:

**SELLERS:**

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**SELLERS' REPRESENTATIVE:**

[•]

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

Name:

Title:

## Appendix A

### Definitions

Capitalized terms and other terms used in this Agreement have the following respective meanings:

“Accounting Policies” means GAAP, applying the principles used in the preparation of the Reviewed Financial Statements, to the extent consistent with GAAP.

“Acquired Company” means Parent Company and each of its Subsidiaries, including the Shortline Subsidiaries and [REDACTED].

“Adjustment Escrow Amount” means [REDACTED], which shall be funded *pro rata* from the Shortline Escrow Amount and the [REDACTED].

“Affiliate” means, with respect to a Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Person. As used in this definition, the word “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise; *provided*, that any beneficial owner (as defined in Rule 13d-3 of the Exchange Act) of 10% or more of the equity securities or voting securities shall be deemed to control such other Person.

“Business Day” means any day other than a Saturday, Sunday, or a day on which banks in New York, New York are authorized or obligated to close.

“Cash” means cash held in deposit accounts, including money market accounts, and cash equivalents (including marketable securities and short-term investments) which can be immediately converted into cash, and checks recorded for deposit but not yet credited to deposit accounts (less any checks and drafts issued, but uncleared).

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Commercially Reasonable Efforts” means the commercially reasonable efforts that a commercially prudent Person that desires to achieve a result would use in similar circumstances to ensure that the result is achieved on a reasonably timely basis; *provided, however*, that a Person required to use its Commercially Reasonable Efforts shall not be required to take actions that would result in a material adverse change in the benefits to such Person under this Agreement and the Contemplated Transactions, to commence any litigation or to offer or grant any material accommodation (financial or otherwise) to any third-party.

“Confidentiality Agreement” means that certain confidentiality agreement, dated as of March 6, 2015, between Purchaser or its Affiliate and GHF.

“Consent or Approval” means, with respect to a Person, any (a) consent, approval, license, Permit, order, or authorization of any other Person; (b) obligation of such Person under any Law, Judgment, or Contract to provide notice; (c) waiver that such Person is required to obtain under any Law, Judgment, Contract, or Permit, including the waiver of a breach, default, or event of default of such Person or the right of any other Person to terminate any rights or accelerate any obligations of such Person, and, for the avoidance of doubt, waiver of any event of default or right of termination triggered by the Contemplated Transactions; or (d) release that such Person is required to obtain of any Encumbrance, in each case of the foregoing without regard to any cure periods, the requirement of any other Person to provide notice, the requirement that time elapse, or any combination of the foregoing.

“Contemplated Transactions” means the purchase and sale of the Acquired Securities and the other transactions and obligations contemplated by or provided for by this Agreement.

“Contract” means, with respect to any Person, any written, oral, implied, or other agreement, contract, prime contract, subcontract, joint venture agreement, basic ordering agreement, grant, subgrant, instrument, note, mortgage, bond, loan, indenture, guaranty, option, indemnity, representation, warranty, deed, assignment, power of attorney, certificate, sale or purchase order, work order, task order, delivery order, intercompany arrangement, insurance policy, lease, license, commitment, covenant, assurance, indemnity, or undertaking, understanding, or arrangement of any kind or nature to which such Person is a party, by which it or its assets are bound or subject or under which it has or may have any current or future Liability.

“Data Room” means the virtual data site for “Vanderbilt” hosted by the Firmex website.

“Diamondback Closing W/C” means, with respect to Diamondback, the amount, as of the Closing Date, as finally determined in accordance with Section 2.6, equal to (x) its current assets *less* (y) its current liabilities, in each in the accounts set forth on Schedule 2.5(b), determined in accordance with the Accounting Policies and the policies and procedures with respect to the Diamondback set forth on Schedule 2.5(b).

“Diamondback Escrow Amount” means \$[●].

“Diamondback Gross Cash Consideration” means [REDACTED].

“Diamondback Proportionate Share” means, for each Seller, the proportionate share set forth next to such Person’s name on the Allocation Schedule under the heading “*Diamondback Proportionate Share*”, which shall equal such Seller’s pro rata ownership percentage of the Equity Securities of Diamondback relative to all of the Equity Securities of Diamondback.

“Diamondback Rollover Sellers” means each Seller listed on Exhibit C under the heading “Diamondback Rollover Sellers.”

“Diamondback W/C Target” means [REDACTED].

“Diamondback Transaction Expenses” means [●]% of the Sellers Transaction Expenses.

“Employee” means any individual who (a) as of the Closing Date, is actively employed by any Acquired Company, and (b) but for the fact that such individual is on Leave, would otherwise be actively employed by any Acquired Company.

“Encumbrances” means any mortgages, security interests, easements, rights, options, encumbrances, or other liens of any kind.

“Entity” means any firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity, organization, association or other entity.

“Entity Representative” means, with respect to a Person, such Person’s directors, managers, partners, members, trustees, officers, employees, equityholders, and agents.

“Environment” means soil, land surface, or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking-water supply, stream sediments, ambient air (including indoor air), and any other environmental medium or natural resource.

“Environmental Claim” means any and all complaints, summons, citations, directives, orders, claims, litigation, investigations, notices of violation, administrative, regulatory or judicial actions, suits, demands or Proceedings, or notices of noncompliance or violation by and Governmental Entity or Person involving or alleging potential liability arising out of, or resulting from any actual or alleged violation of any Environmental Law or relating to Hazardous Material.

“Environmental Law” means any requirement under any Law that relates to (a) the protection of the Environment or the protection of human health or safety, or (b) generation, storage, handling, labeling, transport, disposal or Release of any Hazardous Material, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act; the Solid Waste Disposal Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act; the Hazardous Materials Transportation Act; the Occupational Safety and Health Act; the Oil Pollution Act; the Emergency Planning and Community Right-to-Know Act; the Resource Conservation and Recovery Act; each as amended and including regulations promulgated thereunder and their state counterparts.

“Environmental Permits” shall mean all Permits, licenses, franchises, certificates, approvals, registrations and other similar authorizations of Governmental Entities relating to or required by Environmental Laws and affecting, or relating to, the business of the Acquired Companies as currently conducted.

“Equity Security” means (a) any common, preferred, or other capital stock, limited liability company interest, or membership interest, partnership interest, or similar security or indicia of equity ownership; (b) any warrants, options, or other rights to, directly or indirectly, acquire any security described in clause (a); (c) any other security containing equity features or profit participation features; (d) any security or instrument convertible or exchangeable directly or indirectly, with or without consideration, into or for any security described in clauses (a) through (c) above or another similar security (including convertible notes); and (e) any security carrying any warrant or right to subscribe for or purchase any security described in clauses (a) through (d) above or any similar security.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means American Stock Transfer & Trust Company.

“Escrow Accounts” means the Indemnification Escrow Account and the Adjustment Escrow Account.

“Estimated Sellers Transaction Expenses” means the Estimated Shortline Transaction Expenses and the Estimated Diamondback Transaction Expenses.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Fully Diluted Proportionate Share” means, for each Seller, the proportionate share set forth next to such Person’s name on the Allocation Schedule under the heading *“Fully Diluted Proportionate Share”*, which shall equal such Seller’s *pro rata* share of the Total Consideration.

“Fundamental Company Representations” means the representations and warranties contained in Sections  
[REDACTED]  
[REDACTED]  
[REDACTED].

“Fundamental Purchaser Representations” means the representations contained in Sections [REDACTED]  
[REDACTED].

“Fundamental Representations” means the Fundamental Company Representations, the Fundamental Purchaser Representations and the Fundamental Seller Representations.

“Fundamental Seller Representations” means the representations and warranties contained in [REDACTED]  
[REDACTED].

“GAAP” means United States generally accepted accounting principles in effect as of the Closing Date, applied in a manner consistent with the Financial Statements and past practice of the applicable Acquired Companies.

“Government Bid” means any outstanding or pending quotation, bid or proposal made by any of the Acquired Companies for the sale of goods or the provision of services, which, if accepted or awarded, would lead to a Government Contract.

“Government Contract” means any Contract entered into between any of the Acquired Companies and (a) any Governmental Entity, (b) any prime contractor to any Governmental Entity (in its capacity as such), or (c) any subcontractor (of any tier) in connection with any Contract between another Person and any Governmental Entity.

“Governmental Authorization” means any Consent or Approval of any Governmental Entity.

“Governmental Entity” means any federal, state, local, tribal, or foreign government or any court of competent jurisdiction, administrative or regulatory body, agency, bureau, commission, governing body of any national securities exchange, arbitral body or other governmental authority or instrumentality in any domestic or foreign jurisdiction, or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law) and any appropriate division of any of the foregoing, including, without limitation, the STB and the United States Railroad Retirement Board.

“Governmental Order” means any order, judgment, injunction, assessment, award, decree, ruling, subpoena, verdict, charge, or writ of any Governmental Entity.

“Hazardous Material” means, without regard to amount or concentration: (a) any petroleum, waste oil, crude oil, asbestos, urea formaldehyde, or polychlorinated biphenyl; or (b) any “hazardous substance,” “pollutant,” “contaminant,” “hazardous waste,” “regulated substance,” “hazardous chemical,” or “toxic chemical” as designated, listed, or defined (whether expressly or by reference) in any statute, regulation, or other Environmental Law.

“Immediate Family” shall mean, with respect to any natural person, (a) such person’s spouse, parent, grandparent, children, grandchildren and siblings, (b) such person’s former spouse(s) and current spouses of such person’s children, grandchildren and siblings, and (c) estates, trusts, partnerships and other entities of which a material portion of the interest are held directly or indirectly by the foregoing.

“Income Tax” means any federal, state, local, foreign, or any other Tax based on or measured by reference to net income, including any interest, penalty, or addition thereto, whether or not disputed.

“Income Tax Return” means any Tax Return relating to Income Tax.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person created, issued, or incurred for borrowed money (all principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, make-whole, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and all other amounts payable in connection therewith); (b) all obligations of such Person to pay the deferred purchase price or acquisition price of property or services or similar payment (including any earnout obligations), to the extent constituting a Liability (other than accrued expenses and trade accounts payable incurred in the Ordinary Course of Business of such Person that are not more than 60 days past due); (c) all obligations of such Person evidenced by a note, bond, debenture, or similar Contract; (d) the drawable stated amount of and, without duplication, all reimbursement obligations of such Person under letters of credit, or other similar instruments issued or accepted by banks and other financial institutions; (e) all accumulated dividends or distributions of such Person, whether or not declared; (f) all obligations of such Person for (i) severance, bonus (special or otherwise), change of control, commissions, incentive, retention, stay bonus, or similar arrangements (including any withholding obligations in respect of any excise Tax that may be imposed under Section 4999 of the Code and any income or payroll Taxes that are the obligation of any Acquired Company) other than those that are due and payable solely upon the termination of an Acquired Company employee following the Closing, (ii) accrued or unpaid bonuses, special bonuses, profit sharing distributions, Company-funded 401(k) distributions, or any similar types of incentive arrangements offered by any Acquired Company and (iii) post-termination of

employment payments (if earned as of prior to the Closing) and any income or payroll Taxes that are the obligation of any Acquired Company in connection therewith; (g) all obligations under or in respect of leases required to be capitalized under GAAP; (h) all Unpaid Taxes; (i) all liabilities in respect of any off-balance sheet transactions; and (j) all obligations of another Person of the types listed in clauses (a) through (i) above, payment of which is guaranteed by, or secured by Encumbrances on the property of, such Person. "Indebtedness" specifically (x) excludes [REDACTED]

"Indemnification Escrow Amount" means [REDACTED], which shall be funded *pro rata* from the Shortline Escrow Amount and the [REDACTED].

"Indemnified Taxes" means any of the following Taxes:

- (i) All Taxes of Sellers;
- (ii) All Taxes of any of the Acquired Companies (other than Transfer Taxes (which are governed by (v)) below) for any Tax period ending on or before the Closing Date, or portion of any Straddle Period ending on the Closing Date;
- (iii) All Taxes resulting from a breach of a representation or warranty contained in Section 5.15 (Taxes);
- (iv) All Taxes resulting from a breach of any covenant set forth in Section 7.4; and
- (v) Sellers' allocable share of all Transfer Taxes as determined under Section 7.5(b).

Notwithstanding the foregoing, Indemnified Taxes shall exclude Taxes included as a Liability in the computation of Shortline Closing W/C or Diamondback Closing W/C.

"Insider" means any key employee, officer, director, equityholder or Affiliate of any Seller, any Acquired Company or any of their Affiliates or any Immediate Family of any of the foregoing or any entity in which any such person owns an ownership interest in excess of two percent (2%).

"Intellectual Property" means (a) all inventions, discoveries and ideas, whether patentable or not, and all patents, registrations and patent applications, together with all re-issuances, continuations, continuations-in-part, divisions, revisions, extensions, and re-examinations thereof; (b) all registered and unregistered trademarks and services marks, brand names, certification marks, collective marks, d/b/a's, internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin together with all goodwill associated therewith, and all applications and registrations in connection therewith; (c) all registered and unregistered copyrights, all published and unpublished works of authorship, whether copyrightable or not, and all applications and registrations in connection therewith; and (d) all Trade Secrets.

"Investment Asset" means, with respect to a Person, any asset of such Person constituting a debenture, note, other evidences of Indebtedness, equity security (including any right to purchase or acquire any equity security and any equity securities or other right or instrument convertible into or exchangeable for any equity security), interest in an unincorporated joint venture, and other investment or portfolio asset (including any interest in real property held for investment purposes, but excluding Cash and receivables).

"IT Systems" means electronic data processing, information, recordkeeping, communications, telecommunications, account management, inventory management and other computer systems (including all computer programs, Software, databases, firmware, hardware and related documentation) and internet websites and related content,

“Judgment” means any: (a) order, judgment, injunction, edict, decree, ruling, assessment, stipulation, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ, or award issued, made, entered, rendered, or otherwise put into effect by or under the authority of any court, administrative agency, or other Governmental Entity or any arbitrator or arbitration panel (in each case, whether preliminary or final); or (b) Contract with any Governmental Entity entered into in connection with any Proceeding.

“Knowledge of Sellers” and other phrases of like substance means, with respect to a fact or other matter, the actual knowledge, [REDACTED].

“Law” means any federal, state, local, municipal, foreign, tribal, or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, proclamation, treaty, convention, rule, regulation, proposed regulation, listing standard, directive, requirement, specification, executive decree, or Judgment or interpretation that is issued, enacted, promulgated, or otherwise put into effect, by or under the authority of any Governmental Entity, including any of the foregoing that apply to a short line railroad in the United States and each of the several states in which the Acquired Companies operate.

“Leave” means the absence from active employment as of the Closing Date on account of vacation, ordinary sick leave reasonably expected to result in an absence of short duration, short-term disability leave, medical leave, long-term disability leave, administrative leave, military leave, or any other type of leave that entitles the individual to reinstatement upon the completion of the applicable leave based on the policies of the employing Acquired Company.

“Liability” means any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, vested or unvested, executory, determined, determinable, in contract, tort, strict liability, or otherwise, or otherwise due or to become due.

“Losses” mean any and all payments, recoveries, fines, penalties, interest, insurance premium increases, assessments, judgments, settlements, demands, claims, damages, liabilities, and actual and reasonable costs and expenses suffered or incurred by the indemnified party, including reasonable attorney’s fees and reasonable expenses for investigation and defense; but shall exclude exemplary and punitive damages (except to the extent awarded to any third party).

“Material Adverse Effect” means any change or effect that, when taken individually or together with all other adverse changes or effects (whether or not constituting a breach of a representation, warranty, or covenant set forth in this Agreement), is or would reasonably be expected to have a material adverse effect on the business, results of operations, or financial condition of the Acquired Companies; *provided, however*, that any event, change or occurrence resulting from (a) general economic or railroad industry-wide conditions, (b) national or international political conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment of personnel of the United States, (c) financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (d) changes in GAAP, (e) changes in Law or the interpretation of Law by any Governmental Entity, (f) the public announcement of this Agreement or any of the Contemplated Transactions, or (g) actions or omissions taken with the prior written consent of Purchaser, shall not be taken into account in determining whether a “Material Adverse Effect” has occurred, except with respect to clauses (a) through (f), to the extent that the effects of such change are disproportionately adverse to the business, results of operations, or financial condition of the Acquired Companies, taken as a whole, as compared to other companies in the industries in which the Acquired Companies operate.

“Ordinary Course of Business” means, with respect to any Person, any action taken by such Person: (a) consistent in nature, scope, and magnitude with the past custom and practices of such Person (including with

respect to quantity and frequency); and (b) not caused by any material breach of Contract or material violation of Law.

“Organizational Documents” means, with respect at a Person, the following documents that are presently in effect, including any amendments, modifications, or supplements thereto: (a) the articles or certificate of incorporation, formation, organization, or association; (b) general or limited partnership agreement; (c) limited liability company or operating agreement; (d) bylaws; and (e) other agreements, documents, or instruments relating to the organization, management, or operation of such Person that is an entity or relating to the rights, duties, and obligations of the equityholders of any such Person, including any equityholders’ agreements, voting agreements, voting trusts, joint venture agreements, registration rights agreements, or similar agreements.

“Permit” means any: (a) permit, license, certificate, franchise, concession, approval, Consent or Approval, ratification, permission, clearance, confirmation, endorsement, waiver, certification, designation, rating, registration, qualification, or authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Entity or pursuant to any Law, or (b) right under any Contract with any Governmental Entity.

“Permitted Encumbrances” means: (a) Encumbrances for Taxes not yet due and payable or for Taxes being contested in good faith through appropriate proceedings for which appropriate reserves have been made in accordance with GAAP; (b) liens arising in the Ordinary Course of Business by operation of Law for amounts not yet due, including mechanic’s, carriers’, workmen’s, warehousemen’s, materialmen’s, repairmen’s, employee’s, contractor’s, operator’s and other similar liens to the extent not incurred in connection with the borrowing of money; (c) Encumbrances arising in the Ordinary Course of Business under worker’s compensation, unemployment insurance, social security, retirement and similar legislation; (d) Real Estate Encumbrances; (e) purchase money security interests and Encumbrances securing rental payments; (f) other statutory liens securing payments not yet due; and (g) Permitted Equity Encumbrances.

“Permitted Equity Encumbrances” means with respect to any Equity Securities of the Acquired Companies, (i) the provisions of the Organizational Documents of the applicable Acquired Company and (ii) the restrictions on the sale, transfer, pledge, or other disposition of securities provided in the Securities Act and any state or “blue sky” securities laws.

“Person” means any individual and any Entity.

“Pre-Closing Insurance Policy” means any insurance policy maintained by any Acquired Company prior to the Closing. For the avoidance of doubt, the Parties agree that the Representation and Warranty Policy shall not constitute a Pre-Closing Insurance Policy.

“Proceeding” means any action, arbitration, investigation, prosecution, hearing, litigation, or suit (whether civil, criminal, administrative, judicial, or investigative, whether formal or informal, whether public or private) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

“Purchaser Units” means, with respect to each Rollover Seller, a number of units or strip of units of Purchaser to be issued to such Rollover Seller hereunder, with any such strip of units being the same strip as that acquired by the Levine Leichtman Capital Partners (or their Affiliates) on the Closing Date and with the number of units being determined based on (x) such Rollover Seller’s Rollover Amount and (y) the per unit price paid by Levine Leichtman Capital Partners (or their Affiliates) therefor on the Closing Date.

“Railroad Partners” means

[REDACTED]

“Real Estate Encumbrances” means any (a) easements, covenants, encroachments, rights-of-way, and other similar matters of record; (b) zoning, building, and other similar restrictions imposed by any Governmental Entity which are not violated by any Acquired Company’s use or occupancy of real property; (c) Encumbrances that have been placed by any grantor, developer, landlord, or other third-party on any Real Property Interest, property over which any Acquired Company has easement rights, or on any Leased Real Property and subordination or similar agreements relating thereto; (d) Encumbrances, imperfections, minor defects or irregularities in title, easements, claims, liens, charges, security interests, rights-of-way, covenants, restrictions, rights-of-way, covenants, restrictions, reversionary interests, and other, similar matters that do not, and are not reasonably expected to, individually or in the aggregate, materially impair or interfere with the continued use and operation of the assets to which they relate in the business of any of the Acquired Companies as presently conducted; and (f) such state of facts of which an accurate survey, a railroad valuation map or physical inspection of the assets to which they relate would reveal.

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emitting, emptying, escaping, injection, deposit, disposal, discharge, dispersal, leaching, or migration of any Hazardous Material on or into the Environment.

“Relevant Group” means any affiliated, combined, consolidated, unitary or other group for Tax purposes including, without limitation, any affiliated group within the meaning of Section 1504 of the Code (or any analogous provision of state, local or foreign Tax Law).

“Released Claims” means each and all past, present, and future disputes, claims, controversies, demands, rights, obligations, liabilities, actions, and causes of action of every kind and nature (including (i) any unknown, unsuspected, or undisclosed claim (ii) any claim or right that may be asserted or exercised by any Seller in such Seller’s capacity as an equityholder of any of the Acquired Companies or in any other capacity; and (iii) any claim, right, or cause of action based upon any breach of any express, implied, oral, or written contract or agreement) that (a) any Seller or any of such Seller’s Related Parties may have had in the past, may now have, or may have in the future against any of the Releasees and (b) has arisen or arises directly or indirectly out of, or relates directly or indirectly to, any circumstance, agreement, activity, action, omission, event or matter first occurring, arising or existing on or prior to the Effective Date; *provided, however,* that “Released Claims” shall exclude any claim of that any Seller or such Seller’s Related Parties may have (w) against any of the Releasees that arises under this Agreement or any Transaction Document; (x) relating to the obligation of the Acquired Companies to indemnify their directors or officers pursuant to its Organizational Documents (subject to Section 7.3); (y) relating to payment or provisions for wages, salaries, expense reimbursements, vacation, or sick-pay in connection with any Seller that is an Employee; and (z) with respect to any benefits that are otherwise disclosed but unpaid as of the Closing Date under any Benefit Plan.

“Releasees” means: (a) Purchaser and each of its Affiliates; (b) each Acquired Company and each of its Affiliates; and (c) each of the predecessors, successors, and past, present, and future assigns and Representatives of each Person identified or otherwise referred to in clauses (a) through (b) of this definition.

“Remedies Exception” means, with respect to enforceability of a Contract against a Person, such Contract is enforceable against such Person in accordance with such Contract’s terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors’ rights generally and to general equitable principles.

“Representative” means, with respect to a Person, such Person’s Entity Representatives and independent contractors.

“Restricted Area” means, as applicable, for [REDACTED]  
[REDACTED]  
[REDACTED].

“Restricted Business” means, as applicable [REDACTED]

“Restricted Period” means, for each Restricted Seller, [REDACTED]

“Restricted Seller” means each of [REDACTED]

“Rollover Amount” means, with respect to each Rollover Seller, the amount set forth across from such Rollover Seller’s name on Exhibit C.

“Rollover Sellers” means the Diamondback Rollover Sellers and the Shortline Rollover Sellers.

“Securities Act” means the Securities Act of 1933.

“Sellers Disclosure Schedule” means the schedule attached to this Agreement and referred to herein as the “Sellers Disclosure Schedule” that are referenced in Sellers’ representations, warranties, and covenants set forth in this Agreement.

“Sellers Transaction Expenses” means all Transaction Expenses incurred by or on behalf of or otherwise payable by Sellers and/or the Acquired Companies (including all amounts required to purchase the tail policy described in Section 7.3(a)).

“Shortline Closing W/C” means, with respect to Shortline Subsidiaries, the amount, as of the Closing Date, as finally determined in accordance with Section 2.6, equal to (x) their current assets less (y) their current liabilities, in each in the accounts set forth on Schedule 2.5(a), determined in accordance with the Accounting Policies and the policies and procedures with respect to the Shortline Subsidiaries set forth on Schedule 2.5(a).

“Shortline Escrow Amount” means \$[●].

“Shortline Gross Cash Consideration” means [REDACTED].

“Shortline Proportionate Share” means, for each Seller, the proportionate share set forth next to such Person’s name on the Allocation Schedule under the heading “*Shortline Proportionate Share*”, which shall equal such Seller’s pro rata ownership percentage of the Equity Securities of Parent Company relative to all of the Equity Securities of Parent Company immediately prior to the contribution by Diamondback Sellers described in Section 2.1.

“Shortline Rollover Sellers” means each Seller listed on Exhibit C under the heading “Shortline Rollover Seller.”

“Shortline Transaction Expenses” means [●]% of the Sellers Transaction Expenses.

“Shortline W/C Target” means [REDACTED].

“Software” means any and all types of computer software programs, including operating systems and application programs.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (b) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“STB” shall mean the Surface Transportation Board of the United States Department of Transportation.

“Tax” or “Taxes” (and with correlative meaning, “Taxable”, “Taxing”, and “Taxation”) means (i) all forms of taxation or duties imposed, or required to be collected or withheld, including without limitation any United States federal, state, or local, or non-United States, income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, withholding, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, net worth, intangibles, social security, unemployment, disability, payroll, license, employee, escheat or other tax or similar levy, of any kind whatsoever, together with any interest, penalties, or additions to tax in respect of the foregoing and (ii) any liability for the payment of any amount of a type described in clause (i) arising as a result of being or having been a member of any Relevant Group or being or having been included or required to be included in any Tax Return of any Relevant Group; and (iii) any liability for the payment of any amount of a type described in clause (i) or clause (ii) as a result of any obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

“Tax Authority” means any Governmental Entity having jurisdiction over the assessment, determination, collection, or imposition of any Tax.

“Tax Return” means any return, declaration, report, claim for refund, information return filed or required to be filed in connection with the determination, assessment, or collection of any Tax or the administration of any Law relating to any Tax.

“Third-Party Consent” means any Consent or Approval of any Person other than a Governmental Entity.

“Trade Secrets” means any confidential and proprietary information, trade secrets and know-how, including without limitation processes, schematics, databases, formulae, drawings, prototypes, models, designs and customer lists.

“Transaction Documents” means this Agreement, together with such other agreements, certificates, and documents delivered or caused to be delivered by the Parties incident to or in connection with the Closing.

“Transaction Expenses” means, with respect to any Person, all fees, costs, and expenses (including all legal fees and expenses, all fees and expenses payable to any broker or finder, and all fees and expenses of any audit firm or accountants or any other Person) that have been incurred by or behalf of such Person or its Affiliates (or in the

case of Sellers, by or on behalf of any Acquired Company) in connection with the negotiation or implementation of, or otherwise related to, this Agreement and the Other Transaction Documents and/or the Contemplated Transactions on behalf of or for the benefit of such Person and its Affiliates.

“Treasury Regulations” means the regulations issued by the U.S. Department of Treasury under the Code.

“Unpaid Taxes” means an amount equal to the aggregate amount of liabilities for Taxes of the Acquired Companies in respect of the taxable period ended on [●], 2015, if applicable, and the taxable period (or portion thereof) ending on the Closing Date, calculated by assuming the taxable year of each Acquired Company closed on the Closing Date.

“WARN Act” means the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar foreign, state, provincial or local plant closing mass layoff statute, rule or regulation.

The following terms have the meanings set forth in the sections indicated opposite each such term:

<u>Terms:</u>	<u>Section:</u>
Accounting Referee .....	2.6(f)(ii)
Acquired Intellectual Property .....	5.11(a)
Acquired Securities .....	Preliminary Statement C
Adjustment Escrow Account .....	2.4(b)
Agreed Amount .....	10.4(d)
Agreement .....	Opening Paragraph
Allocation .....	7.4(f)
Allocation Schedule .....	7.2
Benefit Plan .....	5.17(a)
Claim .....	10.4(a)
Claim Notice .....	10.4(b)
Claimed Amount .....	10.4(a)
Closing .....	3.1
Closing Balance Sheet .....	2.6(a)
Closing Consideration .....	2.3(b)(iii)
Closing Date .....	3.1
Closing Deductions .....	2.3(b)(iii)
Contested Amount .....	10.4(d)
Continuing Employee .....	7.1(a)
CRRT .....	Preliminary Statement B
Defense Election Period .....	10.4(i)
Diamondback .....	Preliminary Statement A
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**Appendix B**

**Notice Addresses**

(i) if to Purchaser, to

Regional Rail Holdings, LLC  
c/o Levine Leichtman Capital Partners, Inc.  
335 North Maple Drive, Suite 130  
Beverly Hills, California 90210  
Attention: [REDACTED]  
Email: [REDACTED]

With a copy to (which shall not constitute notice)

Honigman Miller Schwartz and Cohn LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, Michigan 48226  
Attention: [REDACTED]  
Email: [REDACTED]  
[REDACTED]

(ii) if to any Sellers or Sellers' Representative, to

Attention:  
Email:

with a copy to:

Bryan Cave LLP  
1700 Lincoln Street  
Suite 4100  
Denver, Colorado 80203  
Attention: [REDACTED]  
Email: [REDACTED]

**Exhibit C  
Rollover Sellers**

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

