

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**DECLARATION OF KEN NICHOLSON IN SUPPORT OF ORDER APPROVING SALE  
OF ASSETS TO RAILROAD ACQUISITION HOLDINGS LLC**

KEN NICHOLSON, under penalty of perjury, declares as follows:

1. I am a managing director of Fortress Investment Group LLC ("Fortress") and an authorized signatory and Vice President of Railroad Acquisition Holdings LLC, a limited liability company organized under the laws of Delaware (the "Purchaser"). I am personally familiar with the business and financial affairs of the Purchaser.

2. I submit this declaration (the "Declaration") in support of the entry of that certain Order (I) Approving (A) Sale of Assets Pursuant to Asset Purchase Agreement with the Purchaser, (B) Sale of Assets Free and Clear of Liens, Claims, and Interests, and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Thereto and (II) Granting Related Relief (the "Sale Order"). I have personal knowledge of the facts in this Declaration and, if called upon, would testify competently thereto. I am authorized to submit this Declaration on behalf of the Purchaser.

3. The Purchaser, on the one hand, and Robert J. Keach, as chapter 11 trustee (the "Trustee") for the estate of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), and Montreal, Maine & Atlantic Canada Co. ("MMA Canada" and, together with the Debtor, the "Sellers"), on the other hand, are parties to that certain Asset Purchase Agreement dated as of

December 12, 2013, as amended by that certain Amendment to Asset Purchase Agreement dated as of January 16, 2014 (as amended, the “Agreement”).<sup>1</sup> The Agreement provides for, among other things, the sale of substantially all of the assets of the Sellers and the assumption and assignment of certain executory contracts and unexpired leases of the Sellers to the Purchaser (the “Sale”), free and clear of any and all Liens, Claims and Interests (as defined in the Sale Order).

4. Pursuant to certain bid procedures (the “Bid Procedures”) approved by the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”) by order entered by the Bankruptcy Court on December 19, 2013 (the “Bid Procedures Order”), the Trustee conducted an auction (the “Auction”) for the Assets on January 21, 2014. At the conclusion of the Auction, the Trustee and the Monitor (as defined in the Bid Procedures) (a) determined that the Stalking Horse Bid (as defined in the Bid Procedures) of the Purchaser, as set forth in the Agreement, constituted the highest and best offer for the Assets, and that such bid also best satisfied the Public Interest (as defined in the Bid Procedures) and (b) selected the Purchaser as the Successful Bidder (as defined in the Bid Procedures).

5. The Agreement and all related documents were negotiated and entered into by the Purchaser in good faith and as a result of arm’s-length negotiations with the Trustee and the Sellers prior to the Auction. The Purchaser is neither an “insider” nor an “affiliate” of the Trustee or any of the Sellers (as such terms are defined in the Bankruptcy Code). The Purchaser has, at all relevant times, acted in good faith with respect to the Agreement, the transactions contemplated thereby, the entry of the Bid Procedures Order, the Auction and the entry of the Sale Order. The Purchaser, moreover, will continue to act in good faith in pursuing all United

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

States and Canadian regulatory approvals required to consummate, and in closing, the transactions contemplated by the Agreement.

6. The Purchaser would not have entered into the Agreement, and would not consummate the Sale, if (i) the Purchaser were not entitled to the Break-Up Fee and the Expense Reimbursement pursuant to the Agreement and the Bid Procedures Order and (ii) the Sale of the Assets to the Purchaser were not free and clear of any and all Liens, Claims and Interests pursuant to the terms of the Sale Order and the Vesting Order.

7. The Purchaser has the financial wherewithal and capability to fully perform its obligations under the Agreement, including, without limitation, (a) the payment of the Purchase Price and any cure amounts payable pursuant to the Agreement, and (b) the future performance of its obligations under the Assigned Contracts and Leases.

8. The Purchaser is a wholly-owned subsidiary of Fortress Worldwide Transportation and Infrastructure General Partnership ("FTAI"), an entity managed by an affiliate of Fortress. Fortress is a leading global investment management firm with approximately \$58 billion of assets under management. Fortress has extensive experience in the transportation industry, including railroad operations through ownership of Florida East Coast Railway, LLC ("FEC") by certain investment funds managed by an affiliate of Fortress.

9. To further evidence the Purchaser's financial capacity, on or about December 12, 2013, FTAI executed and delivered to the Trustee an equity commitment letter agreeing to backstop the Purchaser's obligations under the Agreement. FTAI has also provided the Trustee with certain financial information demonstrating that FTAI has more than sufficient equity capital to perform all of the Purchaser's obligations under the Agreement and the Assigned Contracts and Leases. For example, as of January 21, 2014, FTAI had aggregate equity capital

of approximately \$395 million, approximately \$184 million of which was available to be invested.

10. Therefore, the Purchaser has the financial ability, operational capacity and industry experience to perform its obligations under each of the Assumed Contracts and Leases set forth on Schedules 2.1(a)(v), 2.1(a)(vi), 2.1(b)(v) and (2.1)(b)(vi) of the Agreement as of the date of the hearing on the Sale Order.


11. To the best of my knowledge, and as disclosed at the Auction, the Purchaser has not had any discussions with any holder of a Qualified Bid (as defined in the Bid Procedures) or any other prospective bidders regarding the Sale. Throughout the Sale process, moreover, the Purchaser has not colluded, directly or indirectly, with any other actual or potential bidder to (i) submit in any way a collusive bid in connection with the Sale or (ii) refrain from bidding in connection with the Sale. Further, the Purchaser has not engaged in any collusive behavior with respect to the Bid Procedures or the Auction. The Purchaser has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement, any advantage against the Trustee, the Sellers or any person interested in the Sale.

12. The Purchaser did not enter into the Agreement, and is not consummating the Sale, for the purpose of hindering, delaying, or defrauding any creditors of the Sellers under the Bankruptcy Code or the laws of the United States, Canada, any state, province, territory or possession thereof, or the District of Columbia, or any other applicable law. The Purchaser has not entered into the Agreement, or any agreement contemplated thereby, and is not consummating the Sale, with any fraudulent or otherwise improper purposes.

13. The Purchaser also has the operational expertise to operate a railroad as a going concern over all of the Assets that it proposes to acquire pursuant to the Agreement. Since 2005, FEC has won five E.H. Harriman Memorial Awards in recognition of its outstanding achievements in the area of rail safety. Over the same period FEC has also been awarded six Jake Awards by the American Short Line & Regional Railroading Association Safety Committee for outstanding safety achievements, including the 2011 President's Award.

14. In accordance with the Bid Procedures, the Purchaser has expressed its commitment to operate a railroad over all of the Assets that it proposes to acquire pursuant to the Agreement as a going concern in the Public Interest, and has indicated that it has no present intention to abandon, discontinue or limit any of the railroad lines that it proposes to acquire pursuant to the Agreement. Time is of the essence in closing the Sale in order to preserve the viability of the Sellers' business as a going concern.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of January 2014.

  
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Ken Nicholson