

## SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Release is made as of this \_\_th day of March, 2009 (the "Effective Date"), by and between Robert Phason, Juan Ortiz, Clifford Rush and Richard Zimmerman (the "Class Representatives"), on behalf of themselves and the Plaintiff Class, as defined by the Order of the United States District Court for the Northern District of Illinois on April 25, 2008 (the "Plaintiff Class"), Meridian Rail Track Products Corp. LLC ("MRTPCLLC"), Meridian Rail Track Products Corp. ("MRTPC"), Meridian Rail LLC ("MRLLC"), Three Cities Fund III LP ("TCF"), TCR Friends III LP ("Friends"), TCR Associates III LLC ("Associates"), TCR G.P. LLC ("G.P."), Cerberus Capital Management LP ("Cerberus"), and Shawn Casey (MRTPCLLC, MRTPC, MRLLC, TCF, Friends, Associates, G.P., Cerberus and Shawn Casey are referred to herein collectively as the "Three Cities Parties"), and Meridian Rail Acquisition Corp. ("Acquisition"), Meridian Rail Holdings Corp. ("Holding"), and Meridian Rail Corp. ("MRC") (Acquisition, Holding and MRC are referred to herein collectively as the "Acquisition Parties"). Collectively, the Plaintiff Class, the Three Cities Parties, and the Acquisition Parties shall be referred to herein as the "Parties").

WHEREAS, on June 21, 2005, the Plaintiff Class filed a Second Amended Complaint in the matter of Phason et al v. Meridian Rail Corp., No. 04 CV 5845, pending in the United States District Court for the Northern District of Illinois (the "Litigation"); and

WHEREAS, on July 31, 2008, the Plaintiff Class filed a Third Amended Complaint in the same matter, adding as additional defendants MRLLC and Acquisition; and

WHEREAS, on October 14, 2008, Acquisition and Holding filed cross claims against MRLLC, TCF, Friends, Associates, G.P., Cerberus, Shawn Casey, Rick Turner ("Turner"), Colby Keener ("Keener"), Jerry Ellison ("Ellison"), William Holcomb ("Holcomb"), Frank Cristelli ("Cristelli"), Susan Baacke ("Baacke") and John Waite ("Waite") (Turner,

Keener, Ellison, Holcomb, Cristelli, Baacke and Waite are referred to herein collectively as the "Individual Defendants"); and

WHEREAS, after mediation before Magistrate Judge Nan Nolan of the United States District Court for the Northern District of Illinois the Parties settled and resolved their differences and agreed to the terms contained herein:

THEREFORE, the Parties, intending to be legally bound, and in consideration of the mutual covenants and releases and other good and valuable consideration set forth herein, do hereby agree as follows:

(1) Court Approval of Settlement. Counsel for the Plaintiff Class shall prepare and submit to the Court motions for preliminary and final approval of the Settlement Agreement and Mutual Releases. This Settlement Agreement and Mutual Releases is contingent on the preliminary and final approval of this settlement by the United States District Court for the Northern District of Illinois. If the Court does not approve the settlement, the Parties shall attempt to resolve any issues raised by the Court, but there shall be no obligation on the part of any of the Parties hereto to agree to any other or different settlement terms, except as provided in paragraph 3 hereof.

(2) Payment. MRTPCLLC, as the Plaintiff Class' former employer, and MRLLC, as the parent of MRTPCLLC, shall pay to the Plaintiff Class and its attorneys the total sum of ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND 00/100 DOLLARS (\$1,375,000.00), in full payment of any and all common law and statutory damages, back pay, severance, pre and post judgment interest and attorneys fees. This payment shall represent the total contribution required of all Parties. One million dollars of that amount (\$1,000,000) shall be paid within thirty (30) days of the final approval of this class action settlement by the United States District Court for the Northern District of Illinois. An additional

two hundred thousand dollars (\$200,000) shall be paid within one hundred twenty (120) days of that final approval. The final one hundred and seventy five thousand dollars (\$175,000) shall be paid within two hundred and ten (210) days of that final approval. Each payment shall be made payable to the law firm of Despres Schwartz and Geoghegan on behalf of the Plaintiff Class.

(3) Attorneys' Fees. The Parties agree that of the \$1,375,000 described above, FOUR HUNDRED THOUSAND DOLLARS (\$400,000) of that amount is a reasonable amount to be paid to the attorneys for the Plaintiff Class (subject to the Court's approval) for their work on the Litigation, and the Three Cities Parties and the Acquisition Parties acknowledge and agree that \$400,000 is a reasonable amount and that they will not contest that amount (to be paid from the \$1,375,000 described above). Class counsel has submitted time slips and rates to defendants which show the time billed in this case. As of the end of January, class counsel have billed roughly 1320 hours in this case or roughly \$478,960.00. The Parties have agreed that \$400,000 is a reasonable fee to class counsel and it also covers any outstanding and future class counsel attorneys' fees in the administration of this settlement. The Class Representatives and counsel for the Plaintiff Class agree that the denial, downward modification, or failure to grant the request for attorneys' fees and costs shall not constitute grounds for termination of this Settlement Agreement.

(4) Dismissal of Action. Upon confirmation of this Settlement Agreement and Mutual Release, the Court shall dismiss the Litigation, with prejudice, with each side bearing its own costs and attorneys fees (other than the payments described herein), except that the Cross-Claim filed by Acquisition and Holding against the Individual Defendants will be dismissed without prejudice. The Court shall retain jurisdiction over the matter and the parties to enforce the terms of the Settlement Agreement.

(5) General Release By Class Representatives and Plaintiff Class. The Class Representatives, for themselves and as representatives of the Plaintiff Class, and on behalf of each member of the Plaintiff Class, and each of their respective agents, successors, heirs, executors and assigns, shall be deemed to have, and by operation of the Court's final approval of the Settlement Agreement, hereby consents and agrees to the General Release contained herein, and depositing or otherwise negotiating any settlement check in this action shall constitute further acknowledgement and consent to this General Release. The Class Representatives, for themselves and each member of the Plaintiff Class as well as any heirs, executors and assigns, does hereby release and discharge the Three Cities Parties and the Acquisition Parties, as defined above, and each of the Three Cities Parties and Acquisition Parties' past, present, and future agents, representatives, shareholders, partners, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors and successors and heirs, executors and assigns (except for the Individual Defendants), from any and all legal, equitable or other claims, demands, setoffs, contracts, accounts, suits (including participation in any class action suits), debts, agreements, actions, causes of action, arbitration proceedings, sums of money, unvested deferred compensation or other unvested benefits, unearned wages, covenants, promises, damages, executions, judgments, findings, controversies and disputes, and any past, present or future duties, responsibilities, or obligations, from the beginning of the world to the date hereof, whether known or unknown, including but not limited to claims that arise out of, or that may, can, or shall arise out of, or that have or ever had arisen out of, or which could have arisen out of, the Litigation, or the employment and/or termination of employment of any of the Plaintiff Class members with any of the Three Cities Parties or Acquisition Parties. This General Release includes, but is not limited to, the release of any claims for defamation, wrongful or unlawful discharge, constructive discharge, violations of Title VII of the Civil Rights Act of

1964, the Rehabilitation Act of 1973, the Civil Rights Act of 1991, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act (“ADEA”), the Equal Pay Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974, the WARN Act, and any and all amendments to the foregoing statutes, violations of any other federal, state, local, and/or municipal whistle-blowing statutes or laws or fair employment statutes or laws, or violations of any other law, rule, regulation, or ordinance pertaining to employment, the termination of employment or discrimination in employment, wages, hours, or any other terms and conditions of employment and termination of employment, and any other claims which have been, or could have been, asserted by any party hereto in any court, arbitration, or other forum involving the subject matter of this release. Provided, however, that this General Release does not apply to actions to enforce this Settlement Agreement or any rights or claims that may arise after the date of execution.

(6) Release By The Three Cities Parties. The Three Cities Parties, as defined above, do hereby release and discharge each of the members of the Plaintiff Class, and each of the Acquisition Parties, and each of their past, present, and future agents, representatives, shareholders, partners, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors and successors and heirs, executors and assigns (except for the Individual Defendants) from any and all legal, equitable or other claims, demands, setoffs, contracts, accounts, suits, debts, agreements, actions, causes of action, arbitration proceedings, sums of money, covenants, promises, damages, executions, judgments, findings, controversies and disputes, arising out of, or that may, can, or shall arise out of, or that have or ever had arisen out of, or which could have arisen out of, the Litigation, or the employment and/or termination of employment of any of the Plaintiff Class members with any of the Three Cities Parties or Acquisition Parties.

(7) Release By The Acquisition Parties. The Acquisition Parties, as defined above, do hereby release and discharge each of the members of the Plaintiff Class, and each of the Three Cities Parties, and each of their past, present, and future agents, representatives, shareholders, partners, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors and successors and heirs, executors and assigns (except for the Individual Defendants) from any and all legal, equitable or other claims, demands, setoffs, contracts, accounts, suits, debts, agreements, actions, causes of action, arbitration proceedings, sums of money, covenants, promises, damages, executions, judgments, findings, controversies and disputes, arising out of, or that may, can, or shall arise out of, or that have or ever had arisen out of, or which could have arisen out of, the Litigation, or the employment and/or termination of employment of any of the Plaintiff Class members with any of the Three Cities Parties or Acquisition Parties, including but not limited to any claims for indemnification.

(8) Exceptions to Three Cities Parties Release. Notwithstanding the foregoing, the releases by the Three Cities Parties, and their related entities do not apply to, and the Three Cities Parties reserve and retain their rights to such claims of: (a) any claim for indemnification, contribution, damages, breach of oral or written contract, or any other common law or statutory claim against VAE Nortrak North America Inc., or any of its related entities, agents, employees, or attorneys arising from the sale of assets to VAE Nortrak North America Inc., the Asset Purchase Agreement for such sale, or any of the claims or facts involved in the Litigation; and (b) any claim for professional malpractice, breach of oral or written contract, breach of fiduciary duties, indemnification, contribution, or any other common law or statutory claim against the law firms of Taft Stettinius & Hollister, Kahn Klieman, or Ice Miller, or any of their present or former attorneys.

(9) Class Notice and Administration. The attorneys for the Plaintiff Class shall be responsible for providing, mailing and administering, and paying the cost of: (a) any class notices that are required by the Court; (b) receiving and tracking any returned claim forms; (c) obtaining any required supplemental information from the Plaintiff Class members; (d) receiving and forwarding to the Parties and the Court any objections to or requests to opt out of the class; (e) verifying the validity of each claim submitted; (f) administering and disbursing settlement funds to the Plaintiff Class members as described in paragraph 10 below; and (g) perform such other duties as are necessary to carry out the provisions of the Settlement Agreement. The settlement payments described herein shall include any and all costs associated with said responsibilities and there shall be no additional amounts due for such administration.

(10) Administration of Settlement Proceeds. The attorneys for the Plaintiff Class shall be responsible for, and pay all costs associated with, the administration of the settlement funds described herein and the payment of said funds to the Plaintiff Class. MRTPCLLC and MRLLC's sole responsibilities with respect to such administration shall be to make the payments described in paragraph 2 above, provide to attorneys for the Plaintiff Class an EIN # and to issue the Form 1099s described in paragraph 12 below. The attorneys for the Plaintiff Class shall be responsible for holding all settlement funds in a segregated escrow account, and making the payments described in paragraph 11 below. In addition, for purposes of issuing the Form 1099s, attorneys for the Plaintiff Class shall provide to MRTPCLLC and MRLLC the name, address, and social security number for each individual receiving a payment, in addition to the amount and dates of payments to each such individual.

(11) Payments to Class Members. Upon confirmation of this Settlement Agreement, and the receipt of the payments described in paragraph 2 above, the attorneys for the Plaintiff Class shall have checks issued and delivered to each member of the Plaintiff Class, in

the amounts designated on Exhibit A hereto, along with a copy of this Settlement Agreement. By depositing or otherwise negotiating those checks, each member of the Plaintiff Class shall thereby agree to the terms of this Settlement Agreement, including the general release contained herein. Plaintiffs' Class attorneys will make a copy of the Settlement Agreement available for review on their website at [www.dsgchicago.com](http://www.dsgchicago.com).

(12) Issuing 1099s. Upon notice from the attorneys for the Plaintiff Class that the payments described in paragraph 11 above have been made, MRTPCCLLC and/or MRLLC shall cause a Form 1099 to be mailed to each member of the Plaintiff Class, reflecting the full amount of each such payment, at the addresses contained in Exhibit A hereto. The payments shall be reported on the 1099 form as "other income." Each member of the Plaintiff Class acknowledges and agrees that if the Internal Revenue Service or any State Department of Revenue determines that payroll or other taxes are owed by MRTPCCLLC, MRLLC, or Acquisition with respect to the payments herein, then each such member of the Plaintiff Class shall reimburse and indemnify MRTPCCLLC, MRLLC or Acquisition for said amounts.

(13) Ownership of Released Matters. The Parties hereby warrant and represent that they are the sole and lawful owner of all rights, title, and interest in and to all matters released pursuant to paragraphs (5), (6), and (7) above, and that they have not heretofore assigned or transferred, or purported to assign or transfer, any of such released matters, in whole or in part, to any other person or entity.

(14) Confidentiality. The Parties agree that they shall not issue any press release or other general announcement of the terms of this Settlement Agreement.

(15) Compromise. This Settlement Agreement and the mutual releases contained herein effect the compromise and settlement of disputed and contested claims and

nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party.

(16) Further Assurances. The Parties hereto agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Settlement Agreement.

(17) Governing Law. This Settlement Agreement and any other documents referred to herein shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois.

(18) Amendments; Waivers. This Settlement Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by each of the parties affected thereby, and approved by the Court. No failure to exercise and no delay in exercising any right, remedy, or power under this Settlement Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Settlement Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

(19) Voluntary Agreement. The parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof and that they sign the same freely and voluntarily.

(20) Drafting. The drafting and negotiation of this Settlement Agreement have been participated in by each of the Parties, and for all purposes this Settlement Agreement shall be deemed to have been drafted jointly by each of the parties.

(21) Counterparts and Effective Date. If this Settlement Agreement is executed in counterparts, each counterpart shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the parties hereto, notwithstanding that all of the

parties are not signatory to the same counterpart. Facsimile signatures shall be valid and binding. The Effective Date of this Settlement Agreement and Mutual Releases shall be the date first set forth above.

(21) Entire Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties hereto concerning the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party hereto to any other party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter hereof are merged herein. This is an Integrated Agreement. This Settlement Agreement cannot be changed except by a writing signed by all parties and approved by the Court.

(22) Addresses for Notification. Any notices hereunder, to the extent they are required, shall be sent to the following names and addresses:

If to the Plaintiff Class:  
Carol T. Nguyen  
Depres, Schwartz & Geoghegan  
77 West Washington Street, Suite 711  
Chicago, IL 60602-2803  
(312)372-2511  
Fax 312 372-7391  
Email – [caroltran\\_2000@yahoo.com](mailto:caroltran_2000@yahoo.com)

If to the Three Cities Parties:  
Steven A. Weiss  
Schopf & Weiss LLP  
One South Wacker Drive  
28<sup>th</sup> Floor  
Chicago, Illinois 60606  
(312) 701-9300  
Fax (312) 701-9335  
Email – [weiss@sw.com](mailto:weiss@sw.com)

If to the Acquisition Parties: