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August 14, 2018
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**IN THE MATTER OF
ALL ABOARD AMERICA! HOLDINGS, INC.**

– ACQUISITION OF CONTROL –

**LUX BUS AMERICA CO. AND
LUX LEASING, LLC**

STB DOCKET NO. MCF-21082

**VERIFIED APPLICATION UNDER 49 U.S.C. § 14303(a)
FOR APPROVAL OF THE ACQUISITION OF CONTROL OF
LUX BUS AMERICA CO. AND LUX LEASING, LLC, BY
ALL ABOARD AMERICA! HOLDINGS, INC.**

All Aboard America! Holdings, Inc., a non-carrier (“Purchaser”), and Matthew N. Brown, an individual (“Matthew Brown”), and David A. Brown, an individual (“David Brown,” and together with Matthew Brown, collectively, the “Sellers”), respectfully submit this application under 49 U.S.C. § 14303(a) and Surface Transportation Board (“STB” or the “Board”) regulations at 49 C.F.R. Part 1182 for approval of the transactions more fully described herein (the “Contemplated Transaction”). The result of the Contemplated Transaction will be the direct acquisition of control by Purchaser (or a designated subsidiary thereof) of the interstate and intrastate passenger motor carrier, Lux Bus America Co. (“Lux Bus”), and the intrastate passenger motor carrier, Lux Leasing, LLC, (“Lux Leasing”).

**FEE RECEIVED
August 14, 2018
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I. Parties to the Contemplated Transaction, Pertinent Operating Authorities, and USDOT Safety Fitness Ratings.

A. Purchaser. Purchaser, All Aboard America! Holdings, Inc., is a non-carrier holding company that is organized under the laws of the state of Delaware, and is headquartered at 1726 Cole Blvd., Suite 220, Lakewood, CO 80401. Purchaser does not have motor carrier authority, and does not have a United States Department of Transportation (“USDOT”) Number or Safety Rating. Purchaser is indirectly controlled by Tensile Capital GP LLC, a Delaware limited liability company (“Tensile”). Tensile is not a carrier, does not have motor carrier authority, and does not have a USDOT Number or Safety Rating.

B. Affiliates of Purchaser. In addition to Purchaser, Tensile indirectly controls the following passenger motor carriers that hold interstate carrier authority (the “Purchaser Affiliated Carriers”): AAAHI Regional Acquisition Corporation (“AAAHI”), Ace Express Coaches, LLC (“Ace”), Hotard Coaches, Inc. (“Hotard”), Industrial Bus Lines, Inc. (“Industrial”), McClintock Enterprises Inc. (“McClintock”), and Sureride Charter Inc. (“Sureride”). Descriptions of the Purchaser Affiliated Carriers are as follow:

1. AAAHI. AAAHI is a recently formed motor carrier that has not yet begun its passenger transportation activities. The USDOT Number assigned to AAAHI is 3140195, and AAAHI does not have a USDOT Safety Rating. For purposes of its interstate passenger operations when they commence, AAAHI holds interstate carrier operating authority under FMCSA Docket No. MC-098597. AAAHI’s principal place of business is located at 1726 Cole Blvd., Suite 220, Lakewood, CO 80401. As AAAHI has not yet commenced its passenger service operations, it does not currently utilize any vehicles or drivers.

2. Ace. Ace is a motor carrier providing regional charter, contract and casino passenger charter services in the state of Colorado and surrounding areas. The

USDOT Number assigned to Ace is 2589674, and Ace has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations, Ace holds interstate carrier operating authority under FMCSA Docket No. MC-908184. Ace’s principal place of business is located at 14000 W. 44th Street, Golden, CO 80403. In providing its services, Ace utilizes approximately 80 vehicles and 99 drivers.

3. Hotard. Hotard is a motor carrier providing local and regional passenger charter services primarily within the states of Louisiana and Mississippi. The USDOT Number assigned to Hotard is 156451, and Hotard has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations, Hotard holds interstate carrier operating authority under FMCSA Docket No. MC-143881. Hotard’s principal place of business is located at 2838 Touro Street, New Orleans, Louisiana 70122. In providing its services, Hotard utilizes approximately 295 vehicles and 308 drivers.

4. Industrial. Industrial, doing business as All Aboard America, is a motor carrier providing local and regional passenger charter services generally in the areas of the states of Arizona, New Mexico and Texas. The USDOT Number assigned to Industrial is 27402, and Industrial has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations, Industrial holds interstate carrier operating authority under FMCSA Docket No. MC-133171. Industrial’s principal place of business is located at 230 S. Country Club Drive, Mesa, AZ 85210. In providing its services, Industrial utilizes approximately 116 vehicles and 140 drivers.

5. McClintock. McClintock, doing business as Goldfield Stage & Co., is a motor carrier providing local and regional passenger charter, tour and contract shuttle services in south California and surrounding areas. The USDOT Number assigned to McClintock is 291979, and McClintock has a “Satisfactory” USDOT Safety Rating. For

purposes of its interstate passenger operations, McClintock holds interstate carrier operating authority under FMCSA Docket No. MC-191442. McClintock's principal place of business is located at 795 Gable Way, El Cajon, CA 92020. In providing its services, McClintock utilizes approximately 27 vehicles and 62 drivers.

6. Sureride. Sureride, doing business as Sundiego Charter Co. and SunExpress Charter Co., is a motor carrier providing local and regional passenger charter, tour and contract shuttle services in south California and surrounding areas. The USDOT Number assigned to Sureride is 701846, and Sureride has a "Satisfactory" USDOT Safety Rating. For purposes of its interstate passenger operations, Sureride holds interstate carrier operating authority under FMCSA Docket No. MC-324772. Sureride's principal place of business is located at 522 W. 8th Street, National City, CA 91950. In providing its services, Sureride utilizes approximately 104 vehicles and 106 drivers.

7. Summary Table. Attached hereto as Schedule A is a summary table setting forth the USDOT Numbers, FMCSA Docket Numbers, and USDOT Safety Rating, as applicable, of Purchaser and the Purchaser Affiliated Carriers.

C. Sellers. All of the issued and outstanding equity interests in Lux Bus and Lux Leasing are owned and held by the Sellers. A summary description of each of the Sellers is as follow:

1. Matthew Brown. Matthew Brown is an individual resident of the state of California and citizen of the United States of America (the "U.S."), having an address of 851 E. Cerritos Avenue, Anaheim, CA 92805. Matthew Brown does not have any direct or indirect ownership interest in any other interstate passenger motor carrier.

2. David Brown. David Brown is an individual resident of the state of California and citizen of the U.S., having an address of 851 N. Eckhoff Street, Orange, CA 92868. David Brown also has a 50% equity ownership interest in Expeditors By Lindale, Inc., doing business as Expeditors (“Expeditors”). Expeditors is a passenger motor carrier that primarily provides equipment and services for support of disastrous incidents (such as support for wildland firefighting crews) in California and surrounding areas. The USDOT Number assigned to Expeditors is 459936, and Expeditors has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations, Expeditors holds interstate carrier operating authority under FMCSA Docket No. MC-246949. Expeditors’s principal place of business is located at 638 N. Eckhoff Street, Orange, CA 92868. In providing its services, Expeditors utilizes approximately 37 vehicles and 38 drivers. Other than as set forth above, David Brown does not have any direct or indirect ownership interest in any other interstate passenger motor carrier. Expeditors is not a party to nor is it the subject of the Contemplated Transaction.

D. Lux Bus and Lux Leasing. A description of the motor carriers to be acquired in the Subject Transaction is as follows:

1. Lux Bus. Lux Bus is a California corporation with its headquarters located at 851 E. Cerritos Avenue, Anaheim, CA 92805. Lux Bus provides interstate and intrastate passenger group charter motor coach and shuttle services in the Los Angeles and San Francisco Bay Areas. Lux Bus also provides daily roundtrip and one-way individual passenger service from the Los Angeles area to Las Vegas, along with individual tour services to amusement attractions in the greater Los Angeles Basin. Lux Bus utilizes terminals and maintenance facilities located in Anaheim, San Jose and Stockton, California. The USDOT Number assigned to Lux Bus is 1125439, and

Lux Bus has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations, Lux Bus holds interstate carrier operating authority under FMCSA Docket No. MC-459355. For purposes of its California intrastate operations, Lux Bus operates pursuant to intrastate authority issued by the California Public Utilities Commission (the “CPUC”) under Class A Passenger Charter Certificate No. TCP 22650 – A. In providing its services, Lux Bus utilizes approximately 160 vehicles and 192 drivers.

2. Lux Leasing. Lux Leasing is a California limited liability company with its headquarters located at 851 E. Cerritos Avenue, Anaheim, CA 92805. Lux Leasing provides intrastate shuttle services for employees and campus logistics for customers in the California South Bay and Silicon Valley areas, utilizing a terminal and maintenance facility located at Moffett Field, California. Lux Leasing operates pursuant to intrastate authority issued by the CPUC under Class A Passenger Charter Certificate No. TCP 28669 – A. Lux Leasing is not a regulated interstate passenger carrier and accordingly, does not have a USDOT Number or Safety Rating, and does not have interstate motor carrier authority. In providing its services, Lux Leasing utilizes approximately 82 vehicles and 107 drivers.

II. Description of the Contemplated Transaction.

The event triggering STB jurisdiction is the proposed acquisition of all of the outstanding equity interests in Lux Bus by the Purchaser, the effect of which will be to place Lux Bus under the control of the Purchaser (and indirectly, Tensile). By means of the Contemplated Transaction, the Purchaser will attain 100% control of Lux Bus. As such, STB’s jurisdiction is invoked pursuant to 49 U.S.C. § 14303(a)(5), as the Contemplated Transaction involves “[a]cquisition of control of a carrier [*i.e.*, Lux Bus] by a person that is not a carrier but that controls any number of carriers [*i.e.*, the Purchaser and Tensile].” We note that 49

U.S.C. § 14303(f) states “a carrier or a corporation participating in or resulting from a transaction approved by the Board under this Section...may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority.” Thus, the granting of this application by the Board will avoid the need for state or local approval.

III. Federally Regulated Carrier Affiliates.

Other than certain of the Purchaser Affiliated Carriers described above, Lux Bus, and Expeditors (which is not a party to or the subject of the Contemplated Transaction), there are no other affiliated carriers with regulated interstate operations involved in this Application.

IV. Jurisdictional Statement – Revenues.

The STB has jurisdiction over this matter under 49 U.S.C. § 14303(g), because the annual aggregate gross operating revenues of the Purchaser Affiliated Carriers and Lux Bus exceed \$2 million during the 12-month period immediately preceding the filing of this application.

V. Environmental Impact.

Approval of this application and consummation of the Contemplated Transaction are not expected to have a significant effect on the quality of the human environment and the conservation of energy resources.

VI. Public Interest Considerations.

A. Adequacy of Transportation Services. The Contemplated Transaction will not have a material, detrimental impact on the adequacy of transportation services available for the public. The Purchaser anticipates that services to the public will be improved as efficiencies are realized. For at least the foreseeable future, the services currently provided by Lux Bus and Lux Leasing will continue to be provided by Lux Bus and Lux Leasing under

the same names used to provide such services prior to the Contemplated Transaction. Lux Bus and Lux Leasing will continue to operate, but going forward, they will be operating within the Purchaser's corporate family, an organization that is thoroughly experienced in passenger transportation operations. Under this new ownership, the Purchaser intends to use its business and financial management skills, as well as its capital, to increase the efficiencies and enhance the viability of Lux Bus and Lux Leasing, thereby ensuring the continued availability of adequate passenger transportation service for the public.

B. Fixed Charges. There are no significant fixed charges associated with the Contemplated Transaction.

C. Employee Interests. It is the current intention of the Purchaser to continue the existing operations of Lux Bus and Lux Leasing and as such, the Contemplated Transaction will not have material impact on employees or labor conditions. The Purchaser does not anticipate a measurable reduction in force or changes in compensation levels and/or benefits, although staffing redundancies could potentially result in limited downsizing of back-office and/or managerial level personnel.

D. Competition and the Public Interest. The law requires the Board to assess competition in the market and the impact on the public interest as affected by approving an arrangement in which multiple passenger carriers are under control of a single entity. In making its analysis, the Board (as did its predecessor, the Interstate Commerce Commission) has consistently found that proposed "common control" arrangements (however accomplished) are inherently not anti-competitive. In large measure, that conclusion rests on the finding that as a result of ease of entry into the market, the passenger motor carrier industry is characterized by healthy intra-modal competition as well as healthy competition between bus service, on the one hand, and, on the other, other modes of transportation, all of

which constitute the “relevant market.” *GLI Acquisition Co – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 598-602 (1988).

On the rare occasions in recent years in which the STB has been called upon to assess the “public interest” and “competition” issues inherent in the practice of the acquisition of ownership of numerous bus carriers by non-carrier entities, it has consistently approved applications of this sort, finding that acquisitions that contemplate the single control of numerous passenger carriers can result in better overall service for the public without any lessening of the benefits of healthy competition. Its decisions include *Stagecoach Group PLC and Coach USA, Inc., et al., - Acquisition of Control – New Today Bus Corp., et al.*, STB Docket No. MC-F-21030 (served January 30, 2009), *Stagecoach Group PLC and Coach USA, Inc., et al., - Acquisition of Control – Eastern Travel and Tour, Inc.*, STB Docket No. MC-21029 (served September 18, 2008); *Delivery Acquisition, Inc. – Purchase – Transportation Management Systems, LLC and East West Resort Transportation, LLC*, STB Docket No. MC-F-21028, (served July 18, 2008); and *Stagecoach Group PLC and Coach USA, Inc., et al., - Control Megabus Northeast LLC*, STB Docket No. MC-F-21027 (served April 11, 2008).

The marketplace of Lux Bus is primarily comprised of group charter and shuttle services in the Los Angeles and San Francisco Bay Areas, tour services to amusement attractions in the Los Angeles Basin, and daily roundtrip and one-way passenger service between Los Angeles and Las Vegas. Competition is quite keen within these marketplaces. The competition within the charter and shuttle services marketplace consists of a large number of competitors, ranging from rather small charter and tour operators to very larger corporate charter operations. Competition relative to the passenger service between Los

Angeles and Las Vegas is significant as passenger services are offered not only by a number of passenger motor carriers, but also a number of scheduled airlines.

The marketplace of Lux Leasing is primarily that of intrastate shuttle services for employees and campus logistics for customers in San Francisco Bay Area. This marketplace is served by eight (8) to ten (10) large corporate transportation service providers and handful of smaller service providers as well. Competition within this marketplace is sharp, and relies on maintaining operating efficiencies and reliability of service delivery.

The Purchaser submits that the consummation of the Contemplated Transaction will provide the availability of the Purchaser's business and financial management skills and additional capital will enhance the viability of Lux Bus and Lux Leasing in their respective marketplaces, thereby ensuring the continued availability of adequate passenger transportation service for the public. Additionally, there is little, if any, overlap of the market areas served by Lux Bus and Lux Leasing with those served by the Purchaser Affiliated Carriers. In light of the foregoing, it is clear that the impact of the Contemplated Transaction on the regulated motor carrier industry will be minimal at most and that neither competition nor the public interest will be adversely affected.

Lastly, Board approval of this Application will allow the acquisition of control of the Acquisition Carriers to be accomplished without the approval of any state, municipal, or other federal regulatory authorities, thus relieving the parties of the Contemplated Transaction from potentially burdensome regulatory requirements. *See* 49 U.S.C. § 14303(f).¹

¹ 49 U.S.C. § 14303(f) provides that "A carrier or corporation participating in or resulting from a transaction approved by the [Surface Transportation] Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction."

VII. Insurance Certification.

Each of the motor carriers that is subject to FMCSA insurance requirements and is involved in this Application now satisfies, and after Board approval will continue to satisfy, FMCSA requirements relating to adequate security for the public. 49 U.S.C. § 13906. All of the FMCSA-approved carriers have a minimum of \$5 million bodily injury and property damage insurance coverage on file with the FMCSA.

VIII. Mexico Certification.

A. Purchaser. The Purchaser certifies that neither it nor any of the Purchaser Affiliated Carriers is domiciled in Mexico, nor are any of such entities owned or controlled by persons of that country.

B. Lux Bus and Lux Leasing. Lux Bus and Lux Leasing each certifies that it is neither domiciled in Mexico, nor owned or controlled by persons of that country.

IX. Exempt Transaction under Federal Premerger Notification Laws

Pursuant to 15 U.S.C. § 18a(c)(6), this Application and copies of all other information and documentary material filed with the STB in connection with the Contemplated Transaction are being filed with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice in keeping with the Contemplated Transaction's status under the regulated-industry provisions of that statute.

X. Conclusion.

As provided by 49 C.F.R. Part 1182 and for the reasons set forth herein, the Board is respectfully requested to approve this Application and authorize the Contemplated Transaction and acquisition of control as described herein.

XI. Verification.

The verifications of the Purchaser, Lux Bus, Lux Leasing, and the Sellers are as follows:

[Remainder of Page Intentionally Blank – Verification and Signature Pages Follow]

A. Verification of the Purchaser. The undersigned verifies under penalty of perjury under the laws of the United States of America, that all information supplied for this Application by such person on behalf of and limited to the Purchaser and the Purchaser Affiliated Carriers is true and correct. Further, the undersigned is qualified and authorized on behalf of the Purchaser to submit this verification and file this Application. The undersigned further certifies under penalty of perjury under the laws of the United States, that he/she knows that willful misrepresentations or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable under 18 U.S.C. § 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

"Purchaser"

All Aboard America! Holdings, Inc.

Dated: August ~~14~~, 2018

By: 

Douglas J. Dossey
Vice President

B. Verification of Lux Bus, Lux Leasing, and the Sellers. Each of the undersigned verifies under penalty of perjury under the laws of the United States of America, that all information supplied by such person on behalf of and limited to Lux Bus, Lux Leasing, and the Sellers in connection with this application is true and correct. Further, each of the undersigned with respect to Lux Bus and Lux Leasing is qualified and authorized on behalf of Lux Bus and Lux Leasing to submit this verification and authorize the filing of this application. In addition, the undersigned Sellers authorize the filing of this application. Each of the undersigned further certifies under penalty of perjury under the laws of the United States, that he knows that willful misrepresentations or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable under 18 U.S.C. § 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

"Lux Bus"

Lux Bus America Co.

Dated: August 13th, 2018

By: 
Matthew N. Brown
Chief Executive Officer

"Lux Leasing"

Lux Leasing, LLC

Dated: August 13th, 2018

By: 
Matthew N. Brown
Chief Executive Officer

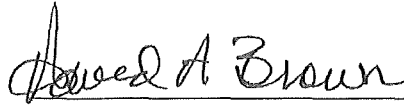
"Sellers"

Dated: August 13th, 2018



Matthew N. Brown

Dated: August 13th, 2018



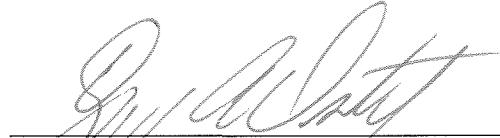
David A. Brown

XI. Legal Counsel for Purchaser

All Aboard America! Holdings, Inc.

Andrew K. Light
Gregory A. Ostendorf
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
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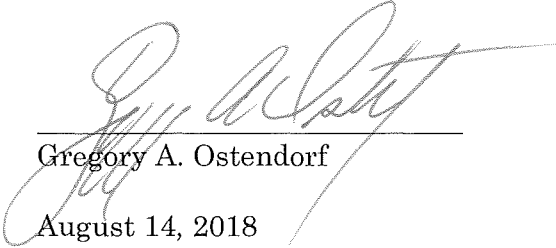
Respectfully,

A handwritten signature in dark ink, appearing to read "Gregory A. Ostendorf", is written over a horizontal line.

Andrew K. Light
Gregory A. Ostendorf
Counsel for All Aboard America! Holdings, Inc.

Certificate of Service

I hereby certify that as required by 49 C.F.R. § 1182.3, I have served a copy of the foregoing application by mailing a copy thereof, via U.S. first-class mail on the U.S. Department of Transportation, Chief Licensing and Insurance Division, 1200 New Jersey Avenue, S.E., Mail Stop W65-331, Washington, DC 20590; and the state regulatory agency for the states in which intrastate operations are affected. I further certify that as required by 15 U.S.C. § 18a(c)(6), I have also served a copy of the foregoing application, and copies of all other information and documentary material filed with the Surface Transportation Board in connection with the Contemplated Transaction, via U.S. first-class mail on the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice.



Gregory A. Ostendorf

August 14, 2018

<u>Schedule A</u>			
<u>Entity/Carrier</u>	<u>USDOT No.</u>	<u>FMCSA Docket No.</u>	<u>USDOT Safety Rating</u>
<u>The Purchaser:</u>			
All Aboard America! Holdings, Inc.	None	None	None
<u>The Purchaser Affiliated Carriers:</u>			
AAAHI Regional Acquisition Corporation	3140195	MC-098597	None
Ace Express Coaches, LLC.	2589674	MC-908184	Satisfactory
Hotard Coaches, Inc.	156451	MC-143881	Satisfactory
Industrial Bus Lines, Inc. d/b/a All Aboard America	27402	MC-133171	Satisfactory
McClintock Enterprises Inc., d/b/a Goldfield Stage & Co.	291979	MC-191442	Satisfactory
Sureride Charter Inc. d/b/a Sundiego Charter Co.	701846	MC-324772	Satisfactory