

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor

**CHAPTER 11
CASE NO. 21-11832-SDM**

**AMENDED APPLICATION TO APPROVE INTERIM AND FINAL EMPLOYMENT
OF CR3 PARTNERS, LLC TO (I) PROVIDE A CHIEF RESTRUCTURING
OFFICER AND ADDITIONAL PERSONNEL; AND (II) DESIGNATE
DENNIS GERRARD AS THE CHIEF RESTRUCTURING OFFICER**

COMES NOW Express Grain Terminals, LLC (the “Debtor”), and files this its Amended Application to Approve Interim and Final Employment of CR3 Partners, LLC to (I) Provide a Chief Restructuring Officer and Additional Personnel; and (II) Designate Dennis Gerrard as the Chief Restructuring Officer (the “Amended Application”). In support of the Amended Application, the Debtor relies upon and incorporates by reference the *Declaration of Dennis Gerrard in Support*, attached hereto as **Exhibit “A”** (the “Gerrard Declaration”), and states as follows, to-wit:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Amended Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue is proper under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are Sections 105(a), and 363(b) of the Bankruptcy Code, and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

II.

BACKGROUND

2. On September 29, 2021, (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), thereby initiating the above-captioned bankruptcy case (the “Chapter 11”).

Case”). The Debtor continues to manage and operate its business as Debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. An official committee of unsecured creditors has yet to be appointed in this Chapter 11 Case. Further, no trustee or examiner has been requested or appointed in this Chapter 11 Case.

4. A prior description of the Debtor and its business, and the facts and circumstances giving rise to the petition in this case are contained in prior motions for authority to use cash collateral and cash collateral orders.

5. Beginning on or about October 9, 2021, the Debtor consulted with CR3 Partners, LLC (“CR3”) and CR3 has provided restructuring advisory services thereafter. In addition, this Court’s prior Agreed Second Interim Cash Collateral Order [DK #120] (and subsequent orders) approved the engagement of CR3 as restructuring advisors, and Dennis Gerrard as Chief Restructuring Officer (“CRO”). CR3 has now submitted its amended engagement letter (the “Amended Engagement Letter”), attached as **Exhibit “B”** hereto.

III.

RELIEF REQUESTED

6. Debtor previously filed its original Application to Approve Interim and Final Employment of CR3 Partners, LLC to (I) Provide a Chief Restructuring Officer and Additional Personnel; and (II) Designate Dennis Gerrard as the Chief Restructuring Officer (the “Original Application”) found at Docket Number 345. Subsequent to the filing of the Original Application, the Debtor’s Board of Directors met during the afternoon and evening of November 16, 2021, and resolved to not only designate Dennis Gerrard as CRO, but to designate Dennis Gerrard as CRO with ultimate and final decision making authority in this Chapter 11 case. The Board of Directors will remain intact, and will continue to provide advisory and consulting services with the CRO and

retains the rights to bring to the Court's attention any differences it may have with the major decisions of the CRO in this case going forward. By this Amended Application, Debtor seeks (a) authority (i) to employ and retain CR3 to provide a CRO, to provide additional personnel, and to grant the CRO ultimate decision making authority with respect to the operation and management of the Debtor; and (ii) to designate Dennis Gerrard as said CRO for the Debtor in connection with this Chapter 11 Case effective as of October 13, 2021, by entry of an order, substantially in the form attached hereto as **Exhibit "C"** pursuant to Sections 105(a) and 363 of the Bankruptcy Code and in accordance with the terms and conditions reflected in the Amended Engagement Letter; (b) approving the terms of CR3's employment, including the fee and expense structure; and (c) granting the Debtor such other and further relief as the Court deems just and proper.

IV.

CR3'S AND DENNIS GERRARD'S QUALIFICATIONS

7. Following arms' length discussions, the Debtor selected CR3 to provide restructuring services. The Debtor seeks to employ CR3 to provide a CRO in order to ensure compliance with its duties and obligations as Debtor-in-possession, and in order to enhance its attempts to maximize the value of its estates. Due to CR3's familiarity with the Debtor's business, as well as the experience providing restructuring, crisis and turnaround management, with a major focus on crisis management and the restructuring of distressed companies, the Debtor has determined that CR3 is best-suited to provide these services. CR3 intends to provide Dennis Gerrard, a Partner in the firm, as the Debtor's CRO. Additionally, Debtor has been, and is, satisfied with the actions of the CRO and CR3 and has elected to establish the CRO as the ultimate decision maker in this case.

8. The Debtor believes that CR3 has considerable experience in matters of this character and is a firm well-qualified to handle the role of providing a CRO and additional personnel in

connection with this Chapter 11 Case. In addition, CR3 is well-acquainted with the operations of the Debtor and is more than capable of assuming its role expeditiously and efficiently. In addition, the CRO/CR3 have established a close working relationship with the Debtor's employees and have restored morale of the employees in the Debtor. Further, the CRO/CR3 have strengthened the Debtor's relationship with its customers, vendors and suppliers.

V.

CR3'S SERVICES AND COMPENSATION

9. The Debtor believes that it is necessary and appropriate to employ CR3 to provide a CRO that is familiar with the industries in which the Debtor operates to render the professional services described herein to allow the Debtor to, among other things, fully evaluate the Debtor's current financial condition and prospects and to assist in the negotiation, promulgation, and evaluation of any proposed transaction involving the assets of the Debtor, including any sale transaction(s) and/or plan of reorganization. The Debtor requires the services of an experienced advisor such as CR3 to provide a CRO and additional personnel to guide the Debtor through its reorganization efforts in order to maximize the value of the estate.

10. The Debtor selected CR3 to provide a CRO because of its professionals' advisory experience as it relates to debtors' rights and creditors' rights, insolvency, debt restructuring and corporate reorganization, and its involvement in numerous other proceedings under Chapter 11 of the Bankruptcy Code before this and other courts. CR3 also possesses industry expertise that is critical for the Debtor. CR3's as well as Mr. Gerrard's qualifications and experience are further described in the Gerrard Declaration attached as Exhibit "A" hereto.

11. As further set forth in the Amended Engagement Letter, the Debtor is seeking to retain CR3 to provide a broad range of services to the Debtor, including without limitation¹:

- a. Making Dennis Gerrard available to serve as the Debtor's CRO with such responsibilities and authority as is commensurate with said position, including the ultimate decision making authority with respect to the management and operation of the Debtor;
- b. To the extent needed, providing other temporary employees to assist with the restructuring efforts and completion of bankruptcy related reporting requirements;
- c. Establishing a communication protocol with stakeholders;
- d. Assisting in the preparation and review of financial projections and cash flow budgets including implementing cash conservation strategies, tactics and processes where appropriate and feasible;
- e. Assisting in the preparation and review of reports or filings as required by the Court or the Office of the United States Trustee, including, without limitation, schedules of assets and liabilities, statements of financial affairs and monthly operating reports;
- f. Assisting in preparation of a plan of reorganization and related documents;
- g. Assisting the Debtor and counsel with preparation for hearings, testimony, creditor meetings, and creation of supporting exhibits and motions;
- h. Assisting the Debtor and counsel in developing litigation strategy and related analysis;
- i. Identifying liquidity needs, including determining potential DIP funding requirements;
- j. Assisting with evaluating executory agreements as necessary;
- k. Performing such other advisory services and/or other functions as are customarily provided in connection with the analysis and negotiations of any

¹To the extent there is any inconsistency between the above summary of services set forth in the Amended Engagement Letter and the terms of the Amended Engagement Letter, the terms of the Amended Engagement Letter shall control. In addition, capitalized terms not otherwise defined herein shall have the meanings set forth in the Amended Engagement Letter.

of the transactions contemplated by the Amended Engagement Letter, as requested by the Debtor or its counsel to assist the Debtor in its Chapter 11 Case and mutually agreed to by CR3, and consistent with our ethical duties; and

1. Performing such other services as outlined in all of the prior cash collateral orders that have been entered in this case.

12. The Debtor does not believe that the services to be rendered by CR3 will be duplicative of the services performed by any other professional. CR3 will work together with any other professionals retained by the Debtor to minimize and avoid duplication of services. The Debtor firmly believes that CR3 will provide these necessary services in a cost-effective, efficient, and timely manner.

13. As set forth more fully in the Amended Engagement Letter, and subject to the terms thereof and the Court's approval, the Debtors and CR3 have agreed that CR3 shall be compensated for services rendered to the Debtor based on the following hourly rates:

STAFF LEVEL	HOURLY RATE	CAP
Dennis Gerrard (CRO)	\$775	\$25,000/week
Partner	\$725 - \$850	--
Todd Bearup (Director)	\$575	\$16,000/week
Marc Patterson (Manager)	\$425	\$13,000/week
Director	\$495 - \$675	--
Manager	\$425 - \$495	--
Associate	\$350	--

14. The Debtor seeks authority to retain and compensate CR3 pursuant to Sections 105(a) and 327 of the Bankruptcy Code, and CR3 agrees to apply to the Court for payment of its hourly fees and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, applicable Local Rules, and U.S. Trustee Guidelines. However,

in the event the Debtor requests and obtains an order from the Bankruptcy Court approving the implementation of interim compensation procedures with respect to the fees and expenses incurred by estate professionals, then the Debtor has agreed to pay CR3's hourly fees in accordance with the terms of any such interim compensation order. CR3 understands and agrees that any payments on account of their hourly fees shall only be made pursuant to the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and orders of the Bankruptcy Court.

15. The Debtor believes that the fee structure described above and in the Amended Engagement Letter is consistent with, and typical of, compensation arrangements entered into by CR3 and other comparable firms in connection with the rendering of similar services under similar circumstances and is reasonable, market-based, and merited by CR3's restructuring expertise. After discussions and arm's-length negotiations, the Debtor believes that the fee structure is reasonable, market-based, and designed to compensate CR3 fairly for its work and to cover customary expenses. Because of the "cap" on hourly charges, the effective hourly rates of the CRO and CR3 are less than those published here.

16. CR3's strategic and financial expertise, as well as its financing skills and restructuring capabilities, some or all of which has and will be required by the Debtor during the term of CR3's engagement, were all important factors to the Debtor in determining the reasonableness of the fee structure. The Debtor believes that the ultimate benefit of CR3's services hereunder cannot be measured only by reference to the number of hours to be expended by CR3's professionals in the performance of such services. The Debtor and CR3 have agreed upon the fee structure in anticipation that a substantial commitment of professional time and effort will be required of CR3 and its professionals in connection with this Chapter 11 Case and in light of the fact that: (i) such

commitment may foreclose other opportunities for CR3 and (ii) the actual time and commitment required of CR3 and its professionals to perform its services under the Amended Engagement Letter may vary substantially from week-to-week and month-to-month, creating “peak load” issues for CR3.

17. As of the Petition Date, the Debtor does not owe CR3 any fees for services performed or expenses incurred under the Amended Engagement Letter. CR3 has incurred fees and expenses after the entry of the Fourth Interim Cash Collateral Order [DK #976] approving its interim engagement.

18. The Amended Engagement Letter contains standard indemnification language with respect to CR3's services. CR3 believes that the indemnification provisions contained in the Amended Engagement Letter are customary and reasonable.

19. Moreover, the Debtor and CR3 negotiated the terms and conditions of the indemnification provisions at arm's length and in good faith. CR3 believes that the provisions contained in the Amended Engagement Letter, viewed in conjunction with the other terms of CR3's proposed retention, are reasonable and in the best interest of the Debtor, the estate, and creditors in light of the fact that the Debtor requires CR3's services in this Chapter 11 Case.

20. Notwithstanding anything to the contrary contained within the Indemnity, CR3 agrees to seek approval from the Court prior to submitting any indemnification claims under the indemnification provisions of the Amended Engagement Letter.

VI.

CR3's DISINTERESTEDNESS

21. Although the Debtor submits that the employment of CR3 is not governed by Section 327 of the Bankruptcy Code, the Debtor attaches the Gerrard Declaration (Exhibit “A”), which

discloses, among other things, any relationship that CR3 or Mr. Gerrard has with the Debtor, its significant creditors, or other significant parties-in-interest known to CR3.

22. Notwithstanding the specific disclosures set forth in the Gerrard Declaration, CR3 has informed the Debtor that as of the date hereof (a) it has no connections with the Debtor, its affiliates, its creditors or other parties-in-interest in this Chapter 11 Case, including the respective attorneys and accountants and the United States Trustee for Region 5 or his attorneys, or any person employed at that office, or any judge in the United States Bankruptcy Court for the Northern District of Mississippi; (b) it does not have or represent any entity having an interest adverse to the interests of the Debtor's estate or of any class of creditors or equity security holders; and (c) neither CR3 nor any employee of CR3 (i) is a creditor, equity security holder or an insider of the Debtor or (ii) is or was, within two years before the Petition Date, a director, officer, or employee of the Debtor.

23. CR3 has informed the Debtor that it will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, CR3 will supplement its disclosure to this Court.

24. CR3 has agreed not to share with any other person or firm the compensation to be paid for professional services rendered in connection with the Chapter 11 Case.

VII.

BASIS FOR RELIEF

25. The Debtor seeks approval of the employment of CR3 pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code effective October 13, 2021. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Further,

pursuant to Section 105(a) of the Bankruptcy Code, the “court may issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a).

26. The resources, capabilities, and experience of Mr. Gerrard and CR3 in advising the Debtor is crucial during this Chapter 11 Case. Mr. Gerrard and CR3 have extensive experience and excellent reputations for providing high quality advisory services to debtors and creditors in large and complex Chapter 11 cases and other debt restructurings. They already possess a well-developed knowledge of the Debtor’s financial history and business operations and are well-suited to provide the Debtor with the financial and restructuring management services contemplated in the Amended Engagement Letter.

27. Accordingly, the Debtor submits that the relief requested in the Amended Application is in the best interests of the Debtor’s estate and all parties-in-interest to this Chapter 11 Case.

28. Denial of the relief requested herein will deprive the Debtor of the assistance of a qualified CRO with expertise in bankruptcy proceedings and the grain terminal industry. Moreover, with prior knowledge of services provided to the Debtor, a denial of CR3’s employment would result in an unjust disadvantage to the Debtor and all parties-in-interest because of CR3’s understanding of the Debtor’s operations. Indeed, if the Debtor was forced to engage a new firm to provide a CRO who lacks a thorough understanding of the Debtor’s business, such change would mandate the commitment of significant and costly estate resources to educate a replacement.

29. Accordingly, the Debtor submits that the employment of CR3 to provide a CRO would be in the best interests of the Debtor and the estate. As noted above, CR3 has extensive experience in the matters involving complex financial restructurings and an excellent reputation for the services that it has rendered in Chapter 11 cases on behalf of debtors and creditors throughout the United States. The Debtor submits that it has satisfied the requirements of the Bankruptcy Code,

the Bankruptcy Rules and the Local Rules to support entry of an order authorizing the Debtor to retain and employ CR3 in its Chapter 11 Case on the terms described herein and in the Amended Engagement Letter.

WHEREFORE, PREMISES CONSIDERED, Debtor respectfully requests that this Court enter an order, substantially in the form of Exhibit "C" hereto, (i) employing and retaining CR3 to provide a Chief Restructuring Officer, to provide additional personnel, and to grant the CRO ultimate decision making authority with respect to the operation and management of the Debtor; and (ii) designating Dennis Gerrard as said Chief Restructuring Officer for the Debtor in connection with this Chapter 11 Case effective as of October 13, 2021. The Debtor prays for such other and further relief as this Court may deem just and proper.

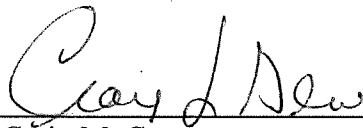
THIS, the 17th day of November, 2021.

Respectfully submitted,

EXPRESS GRAIN TERMINALS, LLC

By Its Attorneys,

LAW OFFICES OF CRAIG M. GENO, PLLC

By: 
Craig M. Geno

OF COUNSEL:

Craig M. Geno; MSB No. 4793
LAW OFFICES OF CRAIG M. GENO, PLLC
587 Highland Colony Parkway
Ridgeland, MS 39157
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CERTIFICATE OF SERVICE

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via Notice of Electronic Filing, a true and correct copy of the above and foregoing instrument to:

Abigail M. Marbury, Esq.
abigail.m.marbury@usdoj.gov

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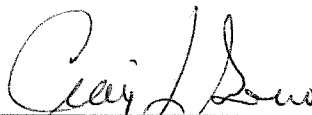
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Mr. Dennis Gerrard
dennis.Gerrard@cr3partners.com

THIS, the 17th day of November, 2021.



Craig M. Geno

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor**

**CHAPTER 11
CASE NO. 21-11832-SDM**

EXHIBIT “A”

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor**

**CHAPTER 11
CASE NO. 21-11832-SDM**

**DECLARATION OF DENNIS GERRARD IN SUPPORT OF AMENDED
APPLICATION TO APPROVE INTERIM AND FINAL EMPLOYMENT OF
CR3 PARTNERS, LLC TO (I) PROVIDE A CHIEF RESTRUCTURING
OFFICER AND ADDITIONAL PERSONNEL; AND (II) DESIGNATE
DENNIS Gerrard AS THE CHIEF RESTRUCTURING OFFICER**

I, Dennis Gerrard, being duly sworn, depose and say as follows:

1. I am a Partner in the firm CR3 Partners, LLC ("CR3"), which has an office at 13355 Noel Road, Suite 2005, Dallas, Texas 75240. CR3 is a restructuring advisory firm with numerous offices throughout the United States.

2. I submit this Declaration (the "Declaration") in support of the Debtor's Amended Application to Approve Interim and Final Employment of CR3 Partners, LLC to (I) Provide a Chief Restructuring Officer and Additional Personnel; and (II) Designate Dennis Gerrard as the Chief Restructuring Officer (the "Amended Application")

3. The statements set forth in this Declaration are based upon my personal knowledge, upon information and belief, and upon client matter records kept in the ordinary course of business that were reviewed by me or other personnel of CR3 or its affiliates.

CR3 Partners' Qualifications

4. CR3 is a leading advisory firm that delivers a broad range of interrelated strategic, operational and financial advisory services. Specifically, CR3's services include, without limitation, assessments of an organization's financial and operational condition, performance management and improvement, interim and crisis management, restructuring and turnaround consulting, merger and acquisition services, and advisory and guidance through the bankruptcy process. These extensive

operation and transactional services help companies and their stakeholders, at any point in the business cycle, develop and implement creative operational and financial solutions to achieve a more stable and responsive operating environment, support future growth, maximize value, and increase productivity. CR3 has significant qualifications and experience in these matters and an excellent reputation for providing high quality, specialized management and restructuring advisory services to debtors, creditors, and equity sponsors in complex chapter 11 cases and other restructurings, both in and out of court and including serving as chief restructuring officer ("CRO"). For instance:

- a. CR3 has advised debtors across multiple industries, including restaurant, retail and entertainment service companies;
- b. CR3 has provided CROs and CFOs of multiple companies;
- c. CR3 has participated in 363 sales;
- d. CR3 has also advised secured creditors, debtor-in-possession lenders and creditors' committees; and
- e. CR3 has played a key role in resolving stakeholder conflicts and brokering litigation settlements.

Professional Services and Compensation

5. Consistent with the terms of the Amended Engagement Letter, in consideration for the compensation contemplated therein, CR3's anticipated services include the following:

- a. Making Dennis Gerrard available to serve as the Debtor's CRO with such responsibilities and authority as is commensurate with said position, including the ultimate decision making authority with respect to the management and operation of the Debtor;
- b. To the extent needed, providing other temporary employees to assist with the restructuring efforts and completion of bankruptcy related reporting requirements;
- c. Establishing a communication protocol with stakeholders;

- d. Assisting in the preparation and review of financial projections and cash flow budgets including implementing cash conservation strategies, tactics, and processes where appropriate and feasible;
 - e. Assisting in the preparation and review of reports or filings as required by the Court or the Office of the United States Trustee, including, without limitation, schedules of assets and liabilities, statements of financial affairs and monthly operating reports;
 - f. Assisting in preparation of a plan of reorganization and related documents;
 - g. Assisting the Debtor and counsel with preparation for hearings, testimony, creditor meetings, and creation of supporting exhibits and motions;
 - h. Assisting the Debtor and counsel in developing litigation strategy and related analysis;
 - i. Identifying liquidity needs, including determining potential DIP funding requirements;
 - j. Assisting with evaluating executory agreements as necessary;
 - k. Performing such other advisory services and/or other functions as are customarily provided in connection with the analysis and negotiations of any of the transactions contemplated by the Amended Engagement Letter, as requested by the Debtor or its counsel to assist the Debtor in its Chapter 11 Case and mutually agreed to by CR3, and consistent with our ethical duties; and
 - l. Performing such other services as outlined in all of the prior cash collateral orders that have been entered in this case.
6. CR3 will provide services at the following rates:

STAFF LEVEL	HOURLY RATE	CAP
Dennis Gerrard (CRO)	\$775	\$25,000/week
Partner	\$725 - \$850	--
Todd Bearup (Director)	\$575	\$16,000/week
Marc Patterson (Manager)	\$425	\$13,000/week
Director	\$495 - \$675	--

Manager	\$425 - \$495	--
Associate	\$350	--

7. As of the Petition Date, the Debtor does not owe CR3 any fees for services performed or expenses incurred under the Amended Engagement Letter. CR3 has incurred fees and expenses after the entry of the Fourth Interim Cash Collateral Order [DK #976] approving its interim engagement.

8. CR3 charges fees on an hourly basis which are at or below market. The fees and expense reimbursement provisions described above are consistent with, or lower than, normal and customary billing practices for cases of this size and complexity, which require the level and scope of services outlined.

Disinterestedness

9. To the best of my knowledge, information and belief, CR3 is a "disinterested person" as defined in Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code.

10. Specifically, to check and clear potential conflicts of interest in this Chapter 11 Case, CR3 reviewed its client relationships to determine whether it had any relationships with the parties identified to CR3 by the Debtor and its advisors (collectively, the "Potential Parties-in-Interest"). The list of Potential Parties-in-Interest is set forth on the attached **Schedule 1**. Based on that search, CR3 represents that, to the best of its knowledge, neither CR3 nor any of its professional personnel have any relationship with the Debtor or the Potential Parties-in-Interest that would impair CR3's ability to perform services for the Debtor. To the best of my knowledge and except as set forth herein, CR3 has no connections with the Debtor or the Potential Parties-in-Interest.

11. Further, as part of its diverse practice, CR3 appears in numerous cases and proceedings, and participates in transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who represent potential claimants and Potential Parties-in-Interest in this Chapter 11 Case. CR3 has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of whom may be involved in these proceedings. CR3 has performed in the past, and may perform in the future, advisory services for various utilities and insurance parties that provide services to the Debtor. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these relationships create interests materially adverse to the Debtor in matters upon which CR3 is to be employed, and none are in connection with this Chapter 11 Case.

12. To the best of my knowledge, no employee of CR3 is a relative of, or has been connected with, the U.S. Trustee in this district or his employees.

13. If the Debtor or CR3 are made aware of any new material facts or relationships, CR3 will provide the Court with supplemental disclosures detailing, among other things, any new potential conflicts between the Debtor and CR3, or other significant parties-in-interest.

14. CR3 has received no promises regarding compensation in this Chapter 11 Case other than in accordance with the Bankruptcy Code and as set forth in this Declaration. CR3 has no agreement with any non-affiliated entity to share any compensation earned in this Chapter 11 Case.

FURTHER AFFIANT SAYETH NOT.



Dennis Gerrard
Partner
CR3 Partners, LLC

STATE OF Mississippi
COUNTY OF Madison

SUBSCRIBED AND SWORN TO BEFORE ME this the 17th day of November, 2021.



Kathryn Carter
Notary Public

Schedule 1

Entity Name	Type	Note

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor**

**CHAPTER 11
CASE NO. 21-11832-SDM**

EXHIBIT "B"



October 12, 2021

BY EMAIL

Mr. John Colman
President
Express Grain Terminals, LLC
808 12th St.
Greenwood, MS. 38930

Dear Mr. Colman:

Thank you for retaining CR3 for the purpose of providing a chief restructuring officer ("CRO") and other personnel to support the CRO for Express Grain Terminals, LLC ("the Company").

The attached Engagement Agreement and its Exhibits detail the terms and conditions of our agreement.

We appreciate the opportunity to present this agreement to you and look forward to working together.

If the Engagement Agreement is acceptable, please sign and return at your earliest convenience. If you have any questions or comments, please contact me.

Sincerely,

Dennis Gerrard
Partner
CR3 Partners, LLC

Engagement Agreement

CR3 PARTNERS, LLC and EXPRESS GRAIN TERMINALS, LLC

The parties to this Engagement Agreement (the “Agreement”) are CR3 Partners, LLC (“CR3”), on the one hand, and Express Grain Terminals, LLC (together with any successor, the “Company”), on the other hand. This Agreement confirms the Company’s retention of CR3 for the purpose of providing a chief restructuring officer and other personnel to support the CRO.

1. **CR3’s Services.** From the date hereof until this Agreement is terminated pursuant to paragraph 8 (the “Term”), CR3 will provide services to the Company as described in the attached Exhibit A (“Work Authorization”), incorporated herein by this reference. The Work Authorization may be amended from time to time with the written approval of CR3 and Company. Any amendment shall be filed with Bankruptcy Court (as defined herein) and shall be subject to the comment and/or objection by the Office of the United States Trustee (“OUST”), creditors and other parties in interest. The services CR3 provides pursuant to this Agreement will be limited to those services that the Company may request within the scope of the Work Authorization. Any additional services that CR3 may agree to provide to the Company will be the subject of a separate agreement between CR3 and the Company, and such agreement remains subject to approval by the Bankruptcy Court after notice and opportunity for hearing. CR3 may without the Company’s consent provide advisory services for other persons or entities whose interests may be adverse to the Company’s or its affiliates in matters not substantially related to our engagement by the Company.
2. **Compensation.** CR3 will present an invoice to the Company each week for services performed, and expenses incurred, under this Agreement for the preceding week. Each invoice will be due upon presentment to the Company. CR3’s fees and expenses will be considered costs of administration and entitled to administrative priority in the Company’s bankruptcy case. The Company shall use its best efforts to secure a “carve-out” in an amount of at least \$300,000 from such assets where third parties may assert a lien or ownership interest. If such “carve out” is not provided in an amount to CR3’s satisfaction, CR3 may execute its right to terminate the Engagement Letter as provided in section 8.

CR3 and the Company agree that success fees are customary for similar work. The Work Authorization may be amended to include payment of a success fee for performance meeting or exceeding certain parameters included in the Work Authorization (“Success Fee”). The Success Fee, if earned, will be paid by the Company as defined in the Work Authorization. Any Success Fee shall be subject to Bankruptcy Court approval after notice to creditors and other parties in interest and opportunity for a hearing.
3. **Expense Reimbursement.** Each week the Company shall reimburse CR3 for all reasonable travel-related expenses incurred in connection with this engagement. CR3 shall provide weekly summaries of expenses for which reimbursement is requested by CR3. In addition, the Company will be billed and will pay an administrative charge of 4% of professional fees. This fee covers variable administrative expenses such as: postage, overnight delivery, copying, printing, record storage and retention, telephone conferences, etc.

4. **Payments Generally.** No amount payable to any third party, by the Company or any other person or entity in connection with the subject matter of this engagement shall reduce or otherwise affect any amount payable hereunder. CR3 will submit invoices for fees and expenses to the Company, and the Company will pay such invoices promptly following receipt.
5. **Indemnification and Related Matters.** The Company and CR3 agree to the provisions of the attached Exhibit B, incorporated herein by this reference, which relates to indemnification and related matters.
6. **Information and Reliance.** During the Term, the Company will furnish CR3 with such information regarding the business, financial condition and prospects of the Company as CR3 reasonably requests, all of which will be accurate and complete in all material respects at the time furnished, other than projections, which will be prepared in good faith and based upon assumptions which, in light of the circumstances under which they are made, are reasonable. During the Term, the Company will promptly notify CR3 if it learns of any material misstatement in, or material omission from, any information previously delivered to CR3. On an ongoing basis during the Term, the Company will inform CR3 of any material developments or matters affecting the business, financial condition and prospects of the Company that occur. In performing its services hereunder, CR3 shall be entitled to rely without investigation upon the accuracy of all information supplied to it by or on behalf of the Company or its advisors, and CR3 shall not in any respect be responsible for independently verifying the accuracy or completeness of any of such information (including by conducting any independent due diligence review).

The Company acknowledges that no reliance shall be placed on draft reports, conclusions or advice, whether oral or written, issued by CR3 as the same may be subject to further work, revision and other factors which may result in such drafts being substantially different from any final report or advice issued.

The Company shall retain exclusive rights to ownership of all work output hereunder. Work output includes reports issued pursuant to any Work Authorization, but excludes, among other things, all working papers of CR3 and any correspondence, memoranda, calculations, notes, etc. that CR3 may have used in the development of the reports above or such working papers or in the performance of any work covered by a Work Authorization.

Upon termination of the engagement, papers and property that you have provided to CR3 will, at your request, be returned to you. Copies of papers CR3 has created for you, which you may need but no longer have, will be made available to you. CR3 reserves the right to destroy any items described in this paragraph that CR3 retains.

The Company agrees that the CRO may directly communicate with the Company's lenders and other creditors and parties in interest with or without other officers or professionals of the Company being present.

7. **Governing Law; Venue; Waiver of Jury Trial.** This Agreement and any claim related directly or indirectly to this Agreement (including any claim concerning advice provided pursuant to this Agreement) shall be governed and construed in accordance with the laws of the State of Mississippi (without giving regard to the conflicts of law provisions thereof). No such claim shall be commenced, prosecuted or continued in any forum other than the United States District or Bankruptcy Court for the Northern District of Mississippi, and each of the Company and CR3 hereby submits on behalf of itself and its successors

and assigns (and, to the extent permitted by applicable law, on behalf of its securityholders and creditors) to the jurisdiction of such courts. The Company hereby waives on behalf of itself and its successors and assigns (and, to the extent permitted by applicable law, on behalf of its securityholders and creditors) any and all right to argue that this choice of forum provision is or has become unreasonable. The Company hereby waives on behalf of itself and its successors and assigns (and, to the extent permitted by applicable law, on behalf of its securityholders and creditors) all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to or arising out of this Agreement or the engagement of CR3 pursuant to, or the performance by CR3 of the services contemplated by, this Agreement.

8. **Termination.** This Agreement may be terminated at any time by CR3 or the Company by giving written notice to the other party, which termination will be effective upon the non-terminating party's receipt of such notice. Upon termination the Company shall pay CR3 all weekly fees and expenses due through the termination date, and any Success Fee which may have been earned. The provisions of this Section and of Sections 2, 3, 5, 6, 7, 9, 10, 12 and 13 will survive any expiration or termination of this engagement.
9. **Personnel.** Each party hereto agrees that it will not employ personnel or representatives of the other party hereto during the period of work provided for hereunder and for a period of one (1) year after the termination of this Agreement or completion of the project or work contemplated hereunder without the written agreement of the other party. In cases where written permission is granted by CR3, a recruiting fee will be billed for an amount mutually agreed upon and not less than 33% of first year expected annual cash compensation including incentive payments.
10. **Public Announcements.** Notwithstanding the confidentially provisions of Section 13, the Company acknowledges and agrees that CR3 may publish an announcement or "tombstone" following the completion of its engagement, either in newspapers, journals, magazines, or other publications or by direct mailings to third parties, whereby CR3 informs the public or such parties of the fact of its engagement by the Company, the general nature of the services provided by CR3, the time period of such engagement, the general nature of the business or industry in which the Company is engaged, the relative size in financial terms of the Company, and similar information that generally describes the nature and extent of CR3's engagement by the Company.
11. **Relationship of Parties.** The Company and CR3 acknowledge and agree that CR3 has been retained under this Agreement as an independent contractor pursuant to 11 U.S.C. § 327 to the Company, that their respective rights and obligations are contractual in nature and that nothing herein is intended to confer any rights or remedies upon any person other than the Company (including the management, board of directors (or similar governing body) and securityholders of the Company) as against CR3. In addition, it is understood and agreed that this Agreement and CR3's engagement create a fiduciary relationship between CR3 and the Company. Any advice or opinion, whether written or oral, provided by CR3 is intended solely for the benefit and use of the Company in considering the matters to which this Agreement relates. CR3 will not be responsible for and will not be deemed to have provided the Company with any tax, accounting, actuarial, legal or other specialist advice. CR3 will not, as part of any aspect of this engagement, undertake any independent valuation or appraisal of, or provide any formal opinion regarding, any assets, liabilities or the solvency of the Company or any other entity. This Agreement does not constitute a representation, warranty or agreement that a specific outcome or outcomes will be obtained.

12. **Miscellaneous.** This Agreement may not be assigned (other than by operation of law) by either party without the prior written consent of the other. The provisions hereof shall inure to the benefit of and be binding upon the successors, assigns, heirs and personal representatives of the Company, CR3 and any person entitled to indemnity under the terms of Exhibit B. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. This Agreement, including the Exhibits hereto (which are hereby incorporated by reference in this Agreement), incorporates the entire understanding of the parties regarding the subject matter hereof, and supersedes all previous agreements or understandings regarding the same, whether written or oral. No waiver, amendment or other modification of this Agreement shall be effective unless in writing and signed by each party to be bound thereby. This Agreement may be executed in any number of counterparts, each of which may contain one or more signatures and each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Copies of this Agreement with facsimile or electronic signatures and copies of this Agreement (or pages hereof) that have been transmitted electronically (e.g., by fax or .pdf) shall be deemed to be original signed versions of this Agreement.
13. **Confidentiality.** CR3 shall use all confidential information provided to it by or on behalf of the Company in connection with CR3's engagement hereunder (the "Confidential Information") solely for the purpose of providing the services which are the subject of this Agreement, and, except as contemplated in connection with such services and CR3's engagement hereunder, shall keep all Confidential Information confidential; provided, however, that nothing herein shall prevent CR3 or any of its Agents (as defined below) from disclosing any Confidential Information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law, rule or regulation or legal or administrative process, (ii) upon the request or demand of any regulatory authority having jurisdiction over CR3 or any of its Agents, (iii) to CR3's or its affiliates' officers, directors, employees, legal counsel, independent auditors and other experts or agents who need to know such information and are informed of the confidential nature of such information, (iv) to any of its affiliates (any of the persons described in clauses (iii) or (iv) to whom Confidential Information is disclosed, "Agents") or (v) for purposes of establishing a "due diligence" defense. The term Confidential Information does not include information that (A) is or becomes publicly available other than by reason of disclosure by CR3 in violation of this Section 13; (B) was in the possession of CR3 at the time of its disclosure by or on behalf of the Company; (C) is acquired from a third party that is not, to CR3's knowledge, prohibited from disclosing such information by an obligation of confidentiality to the Company; or (D) is developed without reference to the Confidential Information. This Section 13 and the obligations hereunder shall survive the expiration or termination of this engagement for a period of one year and shall then terminate.
14. This Agreement is subject to approval by the United States Bankruptcy Court for the Northern District of Mississippi (the "Bankruptcy Court") after proper notice to creditors and other parties in interest and opportunity for hearing.

[Signature page follows.]

Agreed to this _____ day of _____, 2021, by:

EXPRESS GRAIN TERMINALS, LLC:

By: _____

Name:

Title:

EXPRESS BIODIESEL, LLC

By: _____

Name:

Title:

EXPRESS PROCESSING, LLC

By: _____

Name:

Title:

CR3 PARTNERS, LLC:

By: _____

Name: Dennis Gerrard

Title: Partner

EXHIBIT A
to
ENGAGEMENT AGREEMENT

CR3 PARTNERS, LLC
and
EXPRESS GRAIN TERMINALS, LLC

WORK AUTHORIZATION

1. **CRO Services** – Provide the Company the services of Dennis Gerrard, as Chief Restructuring Officer (“CRO”), who will report to the Company’s Board of Directors and be supported by both the CR3 engagement team, other financial advisors retained by the Company, the Company’s personnel, and perform the following services:
 - a. Direct the operations of the Company, including without limitation, being designated as an authorized signatory for the Company to execute all documents and agreements on behalf of the Business Debtors;
 - b. Manage the Chapter 11 process, including working with the Company’s employees, professionals, secured lenders, landlords, any Committees, or other stakeholders;
 - c. Retaining or terminating employees, contractors and non-legal professionals employed by the Company;
 - d. Assist counsel and provide testimony in the Chapter 11 proceeding;
 - e. Establish communication protocol with stakeholders;
 - f. Direct the preparation of financial projections and cash flow budgets, including implementing cash conservation strategies, tactics and processes where appropriate and feasible;
 - g. Direct management in a sale process of assets of the Company and the closing of such sale of assets;
 - h. Identify liquidity needs and implement a cash management program with the management team and approve all material disbursements;
 - i. Identify and implement short-term and/or long-term process improvement or control initiatives;
 - j. Negotiate with creditors and other constituents of the Company concerning restructuring of debt, a plan of reorganization and/or a plan of liquidation;
 - k. Manage the claims reconciliation process, including initiating and pursuing any necessary litigation involving claims filed against the Company and approving or seeking approval, as applicable, of any settlements to be executed by the Company;
 - l. Provide such other similar services as may be requested or required, and in keeping with our ethical responsibilities as a Chapter 11 professional; and
 - m. Such other services, activities, tasks, or duties as may be directed by the Bankruptcy Court.
2. **Professionals and Rates** – The following professionals will be primarily responsible for the engagement. However, during the course of this engagement, we may call upon other CR3 professionals, as needed.

Dennis Gerrard (Chief Restructuring Officer):	\$775/hr. cap of \$25,000 per week
Partner:	\$725/hr. - \$850/hr.
Todd Bearup (Director)	\$575/hr. cap of \$16,000 per week
Marc Paterson (Manager)	\$425/hr. cap of \$13,000 per week
Director:	\$ 495/hr. - \$675/hr.
Manager:	\$ 425/hr. - \$495/hr.

Associate:

\$ 350/hr.

3. **Other Conditions** – The engagement is expected to begin immediately after CR3 and the Company jointly execute this Agreement.
- (a) Simultaneously with the execution of this Agreement, the Company shall cause the issuer of its directors and officers liability insurance to provide the CRO and CR3 with an endorsement (i) showing the CRO and CR3 as an additional insured with regard to the directors and officers liability insurance and any fiduciary liability insurance and (ii) providing that thirty (30) days' notice will be given to the CRO and CR3 prior to any cancellation of, material reduction or change in the coverage provided by or other material modification to such policy. A certificate of issuance evidencing such coverage shall be furnished promptly to the CRO and CR3 at its request. The Company shall purchase a “tail” on such directors and officers insurance policy upon the request of CR3 at the conclusion of the Engagement. Regardless, the Company shall also maintain such applicable insurance coverage for the CRO and CR3 for a period of not less than six (6) years following the date of termination of the Services.
 - (b) The Company represents and warrants to CR3 that its bylaws or Operating Agreement provide for indemnification by the Company of its officers in the manner provided therein. The Company covenants and agrees not to amend or modify such bylaws or Operating Agreement insofar as they provide indemnification to the CRO without CR3's prior written consent.
 - (c) If CR3 is engaged in a Chapter 11 as CRO, this engagement does not preclude CR3 from serving as a consulting or testifying expert if circumstances warrant after the conclusion of CR3's engagement.

EXHIBIT B
to
ENGAGEMENT AGREEMENT

CR3 PARTNERS, LLC
and
EXPRESS GRAIN TERMINALS, LLC

INDEMNIFICATION AND RELATED MATTERS

The Company agrees to indemnify and hold harmless each of CR3, its affiliates and their respective directors, officers, employees, agents, shareholders, controlling persons, partners, and members and each of their respective successors and assigns (each, an “Indemnified Person”) against and from all losses, claims, damages, liabilities or expenses, joint or several, and all actions, claims, proceedings and investigations brought or threatened by or on behalf of any person (including Company Claims (as defined below)) arising out of, relating to or in connection with this Agreement or CR3’s engagement hereunder (collectively, “Indemnification Claims”), and to promptly reimburse each Indemnified Person for all reasonable legal and other expenses as incurred by such Indemnified Person in connection with investigating, preparing to defend or defending any such Indemnification Claims (including expenses of CR3 personnel required to testify or otherwise assist in any litigation), whether or not such Indemnified Person is named as a party thereto; provided, however, that the Company shall not be liable for Indemnification Claims to the extent that such claims are finally determined (not subject to judicial review or appeal) to have resulted primarily from such Indemnified Person’s gross negligence or willful misconduct. The Company also agrees that (a) no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or the Company’s securityholders or creditors arising out of, relating to or in connection with this Agreement or CR3’s engagement hereunder (collectively, “Company Claims”) except to the extent that such liability is finally determined (not subject to judicial review or appeal) to have resulted primarily from such Indemnified Person’s gross negligence or willful misconduct, and (b) in no event will any Indemnified Person have any liability to the Company for special, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity). To the extent permitted by applicable law, CR3’s liability with respect to Company Claims shall be limited to the amount of any fees actually received by CR3 pursuant to this Agreement. THE INDEMNIFICATION PROVISIONS PROVIDED FOR IN THIS AGREEMENT SHALL BE APPLICABLE WHETHER OR NOT THE LOSSES, COSTS, EXPENSES AND DAMAGES IN QUESTION AROSE SOLELY OR IN PART FROM THE ACTIVE, PASSIVE OR CONCURRENT NEGLIGENCE, OR OTHER FAULT OF INDEMNIFIED PARTIES (OTHER THAN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT), AND THE PARTIES ACKNOWLEDGE THAT THIS PARAGRAPH IS CONSPICUOUS.

In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the Company agrees to make contributions to any such Indemnification Claims paid or payable (or proposed to be paid) in such proportion as is appropriate to reflect the relative economic benefits received by the Company and its securityholders and creditors, on the one hand, and the Indemnified Persons, on the other hand; provided, however, that, to the extent permitted by applicable law, the Company agrees to make contributions to any such Indemnification Claims paid or payable such that in the aggregate the Indemnified Persons will not be liable for more than the fees actually received by CR3 pursuant to

this Agreement. The “relative economic benefits” received by the Company and its securityholders and creditors, on the one hand, and the Indemnified Persons, on the other hand, shall be deemed to be in the same proportion as is appropriate to reflect the relative economic benefits and the relative fault of the Company and its securityholders and creditors, on the one hand, and the Indemnified Persons, on the other hand, as well as other equitable considerations; provided, however, that, to the extent permitted by applicable law, the Company agrees to make contributions to any such Indemnification Claims paid or payable such that in the aggregate the Indemnified Persons will not be liable for more than the fees actually received by CR3 pursuant to this Agreement.

Promptly after receipt by an Indemnified Person under this Agreement of notice of the commencement of any action, such Indemnified Person shall, if a claim in respect thereof is to be made against the Company under these indemnification provisions, notify the Company in writing of the commencement thereof, but the omission so to notify the Company shall not relieve it from any liability which it may have to any Indemnified Person otherwise than under this Agreement unless the Company has been materially prejudiced by the failure to provide such notice. The Company shall promptly pay expenses reasonably incurred by any Indemnified Person in defending, participating in, or settling any action, proceeding or investigation in which such Indemnified Person is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under this Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Person hereby undertakes, and the Company hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which an Indemnified Person is a party is also against the Company, the Company may, in lieu of advancing the expenses of separate counsel for such Indemnified Person, provide such Indemnified Person with legal representation by the same counsel who represents the Company, provided such counsel is reasonably satisfactory to such Indemnified Person, at no cost to such Indemnified Person; provided however, that if such counsel or counsel to the Indemnified Person shall determine that due to the existence of actual or potential conflicts of interest between such Indemnified Person and the Company such counsel is unable to represent both the Indemnified Person and the Company, then the Indemnified Person shall be entitled to use separate counsel of its own choice, and the Company shall promptly advance its reasonable expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent an Indemnified Person from using separate counsel of its own choice at its own expense. The Company further agrees that, without the prior written consent of CR3 (not to be unreasonably withheld, conditioned or delayed), the Company will not settle, compromise or consent to the entry of any judgment in any pending or threatened action, claim, proceeding or investigation with respect to which indemnification or contribution may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such action, claim, proceeding or investigation) unless such settlement, compromise or judgment includes an unconditional release of all Indemnified Persons from all liability resulting from such action, claim, proceeding or investigation.

The foregoing rights shall be in addition to any other rights any Indemnified Person may have, and shall not limit any other rights that any Indemnified Person may have at law or otherwise. These indemnification provisions will (i) apply to CR3’s engagement pursuant to this Agreement, (ii) any activities or actions of CR3 relating to such engagement occurring prior to the date of this Agreement, and any subsequent modification of or amendment of this Agreement, and (iii) shall survive any termination of the engagement or this Agreement.

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor**

**CHAPTER 11
CASE NO. 21-11832-SDM**

EXHIBIT “C”

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EXPRESS GRAIN TERMINALS, LLC
Debtor

CHAPTER 11
CASE NO. 21-11832-SDM

ORDER APPROVING INTERIM AND FINAL EMPLOYMENT
OF CR3 PARTNERS, LLC TO (I) PROVIDE A CHIEF RESTRUCTURING
OFFICER AND ADDITIONAL PERSONNEL; AND (II) DESIGNATE
DENNIS GERRARD AS THE CHIEF RESTRUCTURING OFFICER

THIS CAUSE having come on for consideration of the *Amended Application to Approve Interim and Final Employment of CR3 Partners, LLC to (I) Provide a Chief Restructuring Officer and Additional Personnel; and (II) Designate Dennis Gerrard as the Chief Restructuring Officer* [DK #___] (the “Amended Application”) filed herein by Express Grain Terminals, LLC (the “Debtor”), the Court having considered the Amended Application and the *Declaration of Dennis Gerrard in Support*, attached to the Application as Exhibit “A” (the “Gerrard Declaration”), and finds as follows, to-wit:

1. Notice and a hearing were adequate and appropriate under the circumstances.

I.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Amended Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and venue

is proper under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are Sections 105(a), and 363(b) of the Bankruptcy Code, and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

II.

BACKGROUND

3. On September 29, 2021, (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”), thereby initiating the above-captioned bankruptcy case (the “Chapter 11 Case”). The Debtor continues to manage and operate its business as Debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. An official committee of unsecured creditors has yet to be appointed in this Chapter 11 Case. Further, no trustee or examiner has been requested or appointed in this Chapter 11 Case.

5. Beginning on or about October 9, 2021, the Debtor consulted with CR3 Partners, LLC (“CR3”) and CR3 has provided restructuring advisory services thereafter. In addition, this Court’s prior Agreed Second Interim Cash Collateral Order [DK #120] (and subsequent orders) approved the engagement of CR3 as restructuring advisors, and Dennis Gerrard as Chief Restructuring Officer (“CRO”). CR3 has now submitted its amended engagement letter (the “Amended Engagement Letter”), attached as Exhibit “B” to the Motion.

III.

RELIEF REQUESTED

6. Debtor previously filed its original Application to Approve Interim and Final Employment of CR3 Partners, LLC to (I) Provide a Chief Restructuring Officer and Additional Personnel; and (II) Designate Dennis Gerrard as the Chief Restructuring Officer (the “Original

Application”) found at Docket Number 345. Subsequent to the filing of the Original Application, the Debtor’s Board of Directors met during the afternoon and evening of November 16, 2021, and resolved to not only designate Dennis Gerrard as CRO, but to designate Dennis Gerrard as CRO with ultimate and final decision making authority in this Chapter 11 case. The Board of Directors will remain intact, and will continue to provide advisory and consulting services with the CRO and retains the rights to bring to the Court’s attention any differences it may have with the major decisions of the CRO in this case going forward. By the Amended Application, Debtor seeks (a) authority (i) to employ and retain CR3 to provide a CRO, to provide additional personnel, and to grant the CRO ultimate decision making authority with respect to the operation and management of the Debtor; and (ii) to designate Dennis Gerrard as said CRO for the Debtor in connection with this Chapter 11 Case effective as of October 13, 2021, by entry of this Order.

IV.

CR3'S AND DENNIS GERRARD'S QUALIFICATIONS

7. Following arms’ length discussions, the Debtor selected CR3 to provide restructuring services. The Debtor seeks to employ CR3 to provide a CRO in order to ensure compliance with its duties and obligations as Debtor-in-possession, and in order to enhance its attempts to maximize the value of its estates. Due to CR3's familiarity with the Debtor’s business, as well as the experience providing restructuring, crisis and turnaround management, with a major focus on crisis management and the restructuring of distressed companies, the Debtor has determined that CR3 is best-suited to provide these services. CR3 intends to provide Dennis Gerrard, a Partner in the firm, as the Debtor’s CRO. Additionally, Debtor has been, and is, satisfied with the actions of the CRO and CR3 and has elected to establish the CRO as the ultimate decision maker in this case.

8. CR3 has considerable experience in matters of this character and is a firm well-qualified to handle the role of providing a CRO and additional personnel in connection with this Chapter 11 Case. In addition, CR3 is well-acquainted with the operations of the Debtor and is more than capable of assuming its role expeditiously and efficiently. In addition, the CRO/CR3 have established a close working relationship with the Debtor's employees and have restored morale of the employees in the Debtor. Further, the CRO/CR3 have strengthened the Debtor's relationship with its customers, vendors and suppliers.

V.

CR3'S SERVICES AND COMPENSATION

9. The Debtor believes that it is necessary and appropriate to employ CR3 to provide a CRO that is familiar with the industries in which the Debtor operates to render the professional services described herein to allow the Debtor to, among other things, fully evaluate the Debtor's current financial conditional and prospects and to assist in the negotiation, promulgation, and evaluation of any proposed transaction involving the assets of the Debtor, including any sale transaction(s) and/or plan of reorganization. The Debtor requires the services of an experienced advisor such as CR3 to provide a CRO and additional personnel to guide the Debtor through its reorganization efforts in order to maximize the value of the estate.

10. The Debtor selected CR3 to provide a CRO because of its professionals' advisory experience as it relates to debtors' rights and creditors' rights, insolvency, debt restructuring and corporate reorganization, and its involvement in numerous other proceedings under Chapter 11 of the Bankruptcy Code before this and other courts. CR3 also possesses industry expertise that is critical for the Debtor. CR3's as well as Mr. Gerrard's qualifications and experience are further described in the Gerrard Declaration attached as Exhibit "A" to the Application.

11. As further set forth in the Amended Engagement Letter, CR3 is retained to provide a broad range of services to the Debtor, including without limitation¹:

- a. Making Dennis Gerrard available to serve as the Debtor's CRO with such responsibilities and authority as is commensurate with said position, including the ultimate decision making authority with respect to the management and operation of the Debtor;
- b. To the extent needed, providing other temporary employees to assist with the restructuring efforts and completion of bankruptcy related reporting requirements;
- c. Establishing a communication protocol with stakeholders;
- d. Assisting in the preparation and review of financial projections and cash flow budgets including implementing cash conservation strategies, tactics and processes where appropriate and feasible;
- e. Assisting in the preparation and review of reports or filings as required by the Court or the Office of the United States Trustee, including, without limitation, schedules of assets and liabilities, statements of financial affairs and monthly operating reports;
- f. Assisting in preparation of a plan of reorganization and related documents;
- g. Assisting the Debtor and counsel with preparation for hearings, testimony, creditor meetings, and creation of supporting exhibits and motions;
- h. Assisting the Debtors and counsel in developing litigation strategy and related analysis;
- i. Identifying liquidity needs, including determining potential DIP funding requirements;
- j. Assisting with evaluating executory agreements as necessary;

¹To the extent there is any inconsistency between the above summary of services set forth in the Amended Engagement Letter and the terms of the Amended Engagement Letter, the terms of the Amended Engagement Letter shall control. In addition, capitalized terms not otherwise defined herein shall have the meanings set forth in the Amended Engagement Letter.

- k. Performing such other advisory services and/or other functions as are customarily provided in connection with the analysis and negotiations of any of the transactions contemplated by the Engagement Letter, as requested by the Debtors or their counsel to assist the Debtor in its Chapter 11 Case and mutually agreed to by CR3, and consistent with our ethical duties; and
- l. Performing such other services as outlined in all of the prior cash collateral orders that have been entered in this case.

12. The services to be rendered by CR3 will be duplicative of the services performed by any other professional. CR3 will work together with any other professionals retained by the Debtor to minimize and avoid duplication of services. CR3 will provide these necessary services in a cost-effective, efficient, and timely manner.

13. As set forth more fully in the Amended Engagement Letter, CR3 shall be compensated for services rendered to the Debtor based on the following hourly rates:

STAFF LEVEL	HOURLY RATE	CAP
Dennis Gerrard (CRO)	\$775	\$25,000/week
Partner	\$725 - \$850	--
Todd Bearup (Director)	\$575	\$16,000/week
Marc Patterson (Manager)	\$425	\$13,000/week
Director	\$495 - \$675	--
Manager	\$425 - \$495	--
Associate	\$350	--

14. CR3 will be compensated pursuant to Sections 105(a) and 327 of the Bankruptcy Code, CR3 shall apply to the Court for payment of its hourly fees and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2014, applicable Local Rules, and U.S. Trustee Guidelines. However, in the event the Debtor subsequently requests and obtains an order from the Court approving the implementation of interim

compensation procedures with respect to the fees and expenses incurred by estate professionals, then the Debtor has agreed to pay CR3's hourly fees in accordance with the terms of any such interim compensation order. CR3 understands and agrees that any payments on account of their hourly fees shall only be made pursuant to the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and orders of the Bankruptcy Court.

15. The fee structure described above and in the Amended Engagement Letter is consistent with, and typical of, compensation arrangements entered into by CR3 and other comparable firms in connection with the rendering of similar services under similar circumstances and is reasonable, market-based, and merited by CR3's restructuring expertise. The fee structure is reasonable, market-based, and designed to compensate CR3 fairly for its work and to cover customary expenses. Because of the "cap" on hourly charges, the effective hourly rates of the CRO and CR3 are less than those published here.

16. As of the Petition Date, the Debtor does not owe CR3 any fees for services performed or expenses incurred under the Amended Engagement Letter. CR3 has incurred fees and expenses after the entry of the Fourth Interim Cash Collateral Order [DK #976] approving its interim engagement.

17. The Amended Engagement Letter contains standard indemnification language with respect to CR3's services. The indemnification provisions contained in the Amended Engagement Letter are customary and reasonable.

18. Moreover, the Debtor and CR3 negotiated the terms and conditions of the indemnification provisions at arm's length and in good faith. The provisions contained in the Amended Engagement Letter, viewed in conjunction with the other terms of CR3's proposed

retention, are reasonable and in the best interest of the Debtor, the estate, and creditors in light of the fact that the Debtor requires CR3's services in this Chapter 11 Case.

19. Notwithstanding anything to the contrary contained within the Indemnity, CR3 shall seek approval from the Court prior to submitting any indemnification claims under the indemnification provisions of the Amended Engagement Letter.

VI.

CR3's DISINTERESTEDNESS

20. Although the Debtor submits that the employment of CR3 is not governed by Section 327 of the Bankruptcy Code, the Debtor attached the Gerrard Declaration (Exhibit "A" to the Application), which discloses, among other things, any relationship that CR3 or Mr. Gerrard has with the Debtor, its significant creditors, or other significant parties-in-interest known to CR3.

21. Notwithstanding the specific disclosures set forth in the Gerrard Declaration, CR3 has informed the Debtor that as of the date hereof (a) it has no connections with the Debtor, its affiliates, its creditors or other parties-in-interest in this Chapter 11 Case, including the respective attorneys and accountants and the United States Trustee for Region 5 or his attorneys, or any person employed at that office, or any judge in the United States Bankruptcy Court for the Northern District of Mississippi; (b) it does not have or represent any entity having an interest adverse to the interests of the Debtor's estate or of any class of creditors or equity security holders; and (c) neither CR3 nor any employee of CR3 (i) is a creditor, equity security holder or an insider of the Debtor or (ii) is or was, within two years before the Petition Date, a director, officer, or employee of the Debtor.

22. CR3 has informed the Debtor that it will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, CR3 will supplement its disclosure to this Court.

23. CR3 has agreed not to share with any other person or firm the compensation to be paid for professional services rendered in connection with the Chapter 11 Case.

VII.

BASIS FOR RELIEF

24. The employment of CR3 is approved pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code effective October 13, 2021. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, pursuant to Section 105(a) of the Bankruptcy Code, the “court may issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a).

25. The resources, capabilities, and experience of Mr. Gerrard and CR3 in advising the Debtor is crucial during this Chapter 11 Case. Mr. Gerrard and CR3 have extensive experience and excellent reputations for providing high quality advisory services to debtors and creditors in large and complex Chapter 11 cases and other debt restructurings. They already possess a well-developed knowledge of the Debtor’s financial history and business operations and are well-suited to provide the Debtor with the financial and restructuring management services contemplated in the Amended Engagement Letter.

26. The relief requested in the Amended Application is in the best interests of the Debtor’s estate and all parties-in-interest to this Chapter 11 Case.

27. Denial of the relief requested herein will deprive the Debtor of the assistance of a qualified CRO with expertise in bankruptcy proceedings and the grain terminal industry. Moreover, with prior knowledge of services provided to the Debtor, a denial of CR3's employment would result in an unjust disadvantage to the Debtor and all parties-in-interest because of CR3's understanding of the Debtor's operations. Indeed, if the Debtor was forced to engage a new firm to provide a CRO who lacks a thorough understanding of the Debtor's business, such change would mandate the commitment of significant and costly estate resources to educate a replacement.

28. Accordingly, the Debtor submits, and the Court agrees, that the employment of CR3 to provide a CRO would be in the best interests of the Debtor and the estate. As noted above, CR3 has extensive experience in the matters involving complex financial restructurings and an excellent reputation for the services that it has rendered in Chapter 11 cases on behalf of debtors and creditors throughout the United States. The Debtor has satisfied the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules to support entry of an order authorizing the Debtor to retain and employ CR3 in its Chapter 11 Case on the terms described herein and in the Amended Engagement Letter.

29. The Amended Application is hereby approved and the Debtor is authorized to (i) employ and retain CR3 Partners, LLC to provide a Chief Restructuring Officer, to provide additional personnel, and to grant the CRO ultimate decision making authority with respect to the operation and management of the Debtor; and (ii) designate Dennis Gerrard as said Chief Restructuring Officer for the Debtor in connection with this Chapter 11 Case effective as of October 13, 2021.

END OF ORDER

SUBMITTED BY:

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