

documented, recorded and evidenced by various other agreements, instruments, financing statements and documents entered into in connection with the Credit Agreement, all as may have been amended, modified or restated from time to time (collectively, the “Lender Pre-Petition Agreements”),² pursuant to which the Lender made certain loans and other extensions of credit available to Debtors. A copy of the key Lender Pre-Petition Agreements is attached as **Exhibit 1**.

2. Debtors are seeking post-petition financing in the form of a revolving line of credit up to a maximum aggregate principal amount outstanding as of any day not to exceed \$30,300,000 and subject to a Borrowing Base (the “DIP Facility”). The DIP Facility shall bear interest at a rate of 6.25% per annum, provided, however, that the effective interest rate shall not exceed the equivalent rate of interest plus 2% under the Lender Pre-Petition Agreements. The DIP Facility is more fully described in the *draft* Fifth Amendment to Credit Agreement (together with the Pre-Petition Lender Agreements, the “Loan Documents”), attached as **Exhibit 2³** and the draft proposed Order attached as **Exhibit 3**. The DIP Facility will allow Debtors to continue their operations, meet payroll and other necessary, ordinary course business expenditures, administer and preserve the value of their estates, and avoid immediate and irreparable harm.

3. The DIP Facility shall continue through the earlier of March 18, 2022 or such earlier date as all post-petition indebtedness is paid in full § 363, unless terminated by Lender prior to that

² All capitalized terms not otherwise defined in the Interim Order shall have the meaning given such terms in the Lender Pre-Petition Agreements.

³ At the time of filing this Motion, the Debtors and Lender were still in the process of negotiating and finalizing the Fifth Amendment, proposed budget, and Interim Order. To the extent not attached, Debtors shall file a supplemental exhibit with a draft of the Fifth Amendment as soon as such draft is available. Accordingly, such documents remain subject to further revision and approval by Lender and Debtors. However, such documents are being provided now in order to give parties as much notice as possible as to the potential scope of the proposed financing. Any revisions, to the extent material, shall be disclosed prior to or at the Interim Hearing. Debtors acknowledge that Lender’s obligation to fund and to consummate the proposed DIP Facility is subject to the negotiation and execution of mutually acceptable, definitive, written loan documents, and a Budget that is agreed to by the Lender and the Debtors.

time following an Event of Default or otherwise pursuant to the terms of the Loan Documents or the Order.

4. The following chart⁴ lists and sets out the location within the Order and relevant documents of all material provisions of the agreed proposed Order:

Provision	Location and Nature
(1) Events of Default	Credit Agreement § 11; 5th Amendment ¶ 13. The primary location for Events of Default under the DIP Facility. Page 20-23, ¶ 15 – In addition to the Credit Agreement, the Order provides for several milestones as events of default with respect to the sale of the Debtors' assets.
(2) Provisions granting a priority or a lien on property of the estate under 11 U.S.C. § 364(c) or (d) or providing adequate protection or priority for a claim that arose before the commencement of the case, including the grant of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim.	Page 11-14, ¶ 8 – Superpriority Claim with priority over any and all administrative expenses. Page 11-14, ¶ 8 – First priority, perfected Lien upon all assets subject to the Carve-Out, Counsel's Fees with respect to Retainers, and Permitted Liens. See 5th Amendment ¶ 8, Credit Agreement §§ 6, 9.2.
(3) Provisions that prime any properly perfected lien without that lienholder's consent.	Not applicable.
(4) Provisions that grant cross-collateralization protection to the Lender (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the Lender's lien pre-petition) other than liens granted solely as adequate protection against diminution in value of the Lender's Pre-Petition Collateral.	To the extent applicable, see Box #2 of the Chart.
(5) Provisions regarding the validity, enforceability, priority, or amount of a pre-petition claim, or of any lien securing the pre-petition claim.	Page 3-5, ¶ 4 – Concerns amount, validity, priority and enforceability of Lender's claims. Page 26-27, ¶ 20 – Findings contained Paragraph 4 of the Order shall be binding unless certain action is commenced by January 17, 2022.
(6) Provisions regarding a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien.	Page 14-15, ¶ 9 – Entry of Interim Order automatically perfects liens granted by Interim Order. 5th Amendment ¶ 8.1
(7) Provisions that relate to a sale of substantially all of the Debtors' assets	Page 20-21, ¶ 15 – An event of default if Debtors fail to meet any of the sale milestones as set forth in the Order. See also 5th Amendment ¶¶ 11, 13, Credit Agreement § 9.3.

⁴ The chart is meant as a summary only and parties should refer directly to the Lender Pre-Petition Agreements (Ex. A), Fourth Amendment (Ex. B) and the Order (Ex. C) for complete details with respect to the relief provided therein.

(8) Provisions for the payment of professional fees of the Debtors or any committee, including any carve-outs for such payments.	Page 15-16, ¶ 15 – The carve-out provisions include: (1) UST Fees and court costs; (2) if converted, to a Chapter 7 Trustee in the amount of \$50,000; (3) CRO fees and expenses in the amount of \$300,000; and (4) Debtors’ counsel fees and expenses in the amount of \$125,000. See also 5th Amendment ¶¶ 2, 8, Credit Agreement § 1.1.
(9) Provisions for the payment of pre-petition debt.	Page 20, ¶ 14 – On a daily basis, Lender shall sweep Debtors’ accounts maintained by Lender and such receipts shall be applied to the Pre-Petition Indebtedness. See also 5th Amendment ¶ 3, Credit Agreement § 2.1(a).
(10) Provisions regarding a waiver or modification of Bankruptcy Code provisions or applicable rules relating to the automatic stay, including provisions that establish procedures or conditions with respect to the same.	Page 24, ¶ 16 – Shortens and limits Debtors’ ability to respond to relief from the automatic stay by the Lender in the event of default. See also 5th Amendment ¶ 14, Credit Agreement § 12.12.
(11) Provisions containing a waiver or modification of any entity’s authority or right to file a plan or seek an extension of time in which the debtors has the exclusive right to file a plan or solicit acceptances of a plan during the time periods specified in 11 U.S.C. § 1121.	Not applicable.
(12) Provisions that require or prohibit specific terms in the debtors’ plan or that establish that proposing a plan inconsistent with the Interim Order constitutes a default.	Page 22, ¶ 15 – Event of default if the Bankruptcy Court shall enter an order approving a disclosure statement in connection with a plan of reorganization proposed by Debtors or any other Person which plan of reorganization is inconsistent with agreements and obligations hereunder or the DIP Order, e.g., a plan which does not provide for payment in full in cash of the Indebtedness as required by Section 1129(a)(9) of the Bankruptcy Code See also 5th Amendment ¶ 13, Credit Agreement § 11.19 -
(13) Provisions regarding the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order.	Not applicable.
(14) Provisions containing a waiver or modification of any entity’s authority or right to request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364.	5th Amendment ¶ 13, Credit Agreement § 1 – Event of Default if an order shall be entered granting any party (other than Lender) in the Case a priority under Section 364(c)(1) of the Bankruptcy Code unless such order provides for payment in full in cash of the Indebtedness upon closing of such financing, or Debtors file a motion seeking such relief See also Page 20-22, ¶ 15
(15) Provisions that address the rights and obligations of guarantors or co-obligors.	Page 23, ¶ 15 – Event of default if Debtors terminate CRO. Page 28, ¶ 24 – Reaffirmation of guaranties required and Michael Coleman required to grant additional liens to Lender. See also Fifth Amendment ¶ 16, Credit Agreement § 13.27
(16) Provisions that obligate the Debtors to pay any of Lender’s professional fees.	Page 28, ¶ 24.f – Provides for reimbursement of Lender’s professional fees.
(17) Provisions the purport to bind a subsequent trustee.	See Box #5.
(18) Provisions containing a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any	Page 16, ¶ 12 – Carve-Out and retainer monies cannot be used with respect to claims being brought against Lender.

modification of the statute of limitations or other deadline to commence an action.	<p>Page 9, ¶ 6(e) –DIP Facility shall not be used to pay any fees or expense with respect to claims against the Lender.</p> <p>Page 10, ¶ 6(j)– Waiver and release of defenses against the Lender, subject to parties in interest’s right to contest under paragraph 20 of the Interim Order.</p> <p>5th Amendment ¶ 13, Credit Agreement § 11.19 – Event of Default occurs if any party commences an action adverse to Lender or its rights and remedies.</p> <p>5th Amendment ¶ 18 – Release of Claims by Debtors.</p>
(19) Provisions containing the indemnification of any entity.	Credit Agreement § 12.20 - Indemnity Provision
(20) Provisions containing a release, waiver, or limitation of any right under 11 U.S.C. § 506(c).	<p>5th Amendment ¶ 9, Credit Agreement § 7.5- Collateral not subject to any claim or lien under 506(c).</p> <p>Page 10, ¶ 6(j) – Waiver of claims under 506(c); See also Fifth Amendment ¶ 18</p>
(21) Provisions granting a lien on any claim or cause of action arising under 11 U.S.C. §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).	Page 11-13, ¶ 8 – Lender’s Collateral includes Chapter 5 causes of action, except for § 549, and the proceeds thereof, but limited to difference of the principal and interest of the Pre-Petition Indebtedness on the petition date and the total principal and interest of the Indebtedness.
(22) Provisions providing for a waiver or modification of the applicability of nonbankruptcy law.	<p>Page 14, ¶ 9 – No requirement filing of financing statements to perfect liens on Collateral.</p> <p>5th Amendment ¶ 18 – Release of Claims by Debtors.</p> <p>Page 26 ¶ 20 – Findings contained Paragraph 4 of the Order shall be binding unless certain action is commenced by January 17, 2022.</p> <p>Page 27, ¶ 21 – Preservation of right to Credit Bid. See also 5th Amendment ¶ 11; Credit Agreement § 9.3</p>
(23) Provisions to remain in effect if interim relief granted, but final relief denied.	Page 25-26, ¶ 19 -Preservation of Rights under Interim Order.
(24) Post-Petition Financing Fee	Page 9, ¶ 6(f) – all fees due under the Credit Agreement.
(25) Provisions that grant liens on unencumbered property	Page 11-13 ¶ 8 -Post-Petition collateral includes all property that was not subject to a valid, perfected and non-avoidable lien in favor of a third party. See also Fifth Amendment ¶ 8, Credit Agreement § 6.13

II. Procedural Background and Jurisdiction

5. On September 29, 2021 (the “Petition Date”), Debtors filed for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Mississippi (the “Bankruptcy Court”).

6. Debtors remain in possession of their assets and continue to operate as debtors-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108. On December 14, 2021, the Court

appointed Dennis Gerrard, with CR3 Partners, LLC as chief restricting officer (the “CRO”).

7. An Official Committee of Unsecured Creditors has not yet been appointed in the case.

8. This is a core proceeding pursuant to 28 U.S.C. § 157(2)(D), (K), (M), and (O).

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

11. The Statutory and Rule Predications for this Motion are 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507, and Bankruptcy Rules 2002, 4001, 6004, and 9014.

III. Debtors’ Background

12. The Debtors describe their business as an agricultural processing and marketing company. As part of that business, Debtors own and operate a grain elevator and other grain processing facilities (the “Facility”) and currently possess several million bushels of grain—comprised of corn, soybeans, and wheat—the “Grain”), as well as other items derived from the Grain after processing, such as, but not limited to, meal and oil, (the “Processed Grain Products”), in which various interest holders have asserted claims.

13. Debtors have three locations in Mississippi: Greenwood, Sidon, and Minter City. Debtors currently have approximately 160 employees.

14. On December 17, 2020, Debtors entered into the latest Credit Agreement with Lender under which Lender made an unconditionally cancellable revolving loan to Debtors in the original maximum principal amount of \$40,000,000, and a term loan to Debtors in the original principal amount of \$35,000,000.

15. On October 5, 2021, the Court first entered the Agreed Interim Order (I) Authorizing Use of Cash Collateral, (II) Authorizing Use of Existing Bank Accounts Cash Management System, and (III) Granting Adequate Protection (Doc. 32), which has been amended

and subsequently continued through December 17, 2021 (as amended, the “Cash Collateral Order”). See Docs. 120, 603, 643, 976, 1309.

16. On November 8, 2021, this Court entered the Order Establishing Procedures for Determination of Rights, Ownership Interests, Liens, Security Interests and All Other Interests in and to Grain and Proceeds of Grain [Docket 1070] (the “Grain Procedures Order”). Pursuant to the Grain Procedures Order, streamlined procedures under 11 U.S.C. § 557 have been implemented in order to effectively and efficiently determine the right, title, interest and priorities of the various parties asserting claims to the grain and proceeds.

IV. Objectives to be Accomplished by the DIP Facility

17. Debtors seek to accomplish four primary objectives by with the DIP Facility:

a. The DIP Facility will allow the Business Debtors increased liquidity in order to purchase soybeans on an immediate post-petition basis. Currently, the Debtors have a court-approved mechanism in which to purchase post-petition beans, but it has an inherent lag in payment to farmers. As such, it appears that farmers are hesitant to deliver their grain to the Business Debtors. The current procedures make it difficult for the Debtors to use such assets in the soybean crushing operation. The DIP Facility will allow the Debtors to immediately purchase such grain on a “cash on the barrel” approach and use such soybeans in the crushing operation.

a. Debtors seek to sell their assets as a going concern operation. Debtors believe that the sale of their assets as a going concern is in the best interest of the captioned estates, the creditors, their employees and community. In the absence of the DIP Facility, the sale of Debtors’ business and assets as a going concern is put in great jeopardy, and would cause serious and irreparable harm to Debtors and their estates if not granted.

b. Much has been made in this case of the Debtors’ use of beans that were in

the possession of the Debtors as of the Petition Date. By allowing the Debtors the necessary liquidity to purchase the post-petition beans, it reduces the Debtors' reliance on the pre-petition bean supply. Further, as contemplated by the DIP Facility, to the extent pre-petition beans must be used, they can be pre-funded by the Debtors versus the process that is currently in place and potentially at a reduced cost. Additionally, the proposed DIP Facility takes into account the use of pre-petition beans and adequately protects and provides for the use prior to DIP Facility going into effect.

c. Finally, certain objections have been raised as to the post-petition use of the corn proceeds. The DIP Facility facilitates the additional funding of the segregated corn reserve.

In short, the DIP Facility provides an ability to solve several of the issues that have plagued this case.

V. Relief Requested

18. By this Motion, Debtors seek, *inter alia*, pursuant to Bankruptcy Code §§ 105, 361, 362, 363, 364 and 507, and Bankruptcy Rules 2002, 4001, 6004 and 9014, the following:

a. Authority for the Debtors to obtain secured post-petition financing on a super-priority basis subject only to the Permitted Liens (as defined in the Credit Agreement);

b. Authority for the Debtors to execute and enter into the Fifth Amendment, which amends the Credit Agreement, to provide for the DIP Facility and to perform such other and further acts as may be required in connection with the Credit Agreement and the Loan Documents;

c. Granting super-priority administrative expense claims to the Lender for all post-petition financing provided by Lender payable from, and having recourse to all of the

pre-petition and post-petition property of the Debtors' bankruptcy estates (the "Estates") and all proceeds thereof, subject only to the Carve-Out (defined in the Order) and the Permitted Liens, and granting liens for the post-petition financing to Lender in all Post-Petition Collateral (defined in the Order) in accordance with the Credit Agreement, the Loan Documents and the proposed Order; and

d. Approval of the terms and conditions of the DIP Facility, the Credit Agreement, and the Order on an interim and final basis.

VI. Lender's Prepetition Claim

19. On or about December 17, 2020, Debtors executed a Fourth Amended and Restated Loan and Security Agreement (as amended, the "Loan Agreement") with Lender. A true and correct copy of the Loan Agreement is attached as **Exhibit A** and is incorporated by reference herein.

20. Pursuant to the Loan Agreement, Lender made an unconditionally cancellable revolving loan to Debtors in the original maximum principal amount of \$40,000,000 ("Revolving Loan"), and a term loan to Debtors in the original principal amount of \$35,000,000 (the "Term Loan," and collectively with the Revolving Loan, the "Loans").

21. Under the Loan Agreement as initially documented, the maximum principal amount available under the Revolving Loan was subject to automatic seasonal adjustments, and was initially set to decrease to \$30,000,000 for the period from May 1 through May 31, 2021, and then \$25,000,000 for the period from June 1 through the maturity date of the Revolving Loan, which was October 31, 2021.

22. The Loans were modified numerous times pursuant to the following amendments executed by Debtors with Lender (collectively, the "Amendments"):

a. First Amendment to Fourth Amended and Restated Loan and Security

Agreement dated as of February 2021 (the “First Amendment”);

b. Second Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of April 30, 2021 (the “Second Amendment”);

c. Third Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of May 31, 2021 (the “Third Amendment”); and

d. Fourth Amendment to Fourth Amended and Restated Loan and Security Agreement dated as of June 30, 2021 (the “Fourth Amendment”).

The Amendments are included in **Exhibit A** and are incorporated by reference herein.

23. Under the Second Amendment, Third Amendment, and Fourth Amendment, the seasonal adjustment for the Revolving Loan was amended and ultimately removed so that the commitment under the Revolving Loan remained \$40,000,000 through the maturity date.

24. In connection with the Revolving Loan, Debtors executed an Amended and Restated Revolving Note dated December 17, 2020, in the original principal amount of \$40,000,000 (the “Revolving Note”). A true and accurate copy of the Revolving Note is included in Exhibit A and is incorporated by reference herein.

25. In connection with the Term Loan, Debtors executed an Amended and Restated Term Note dated December 17, 2020, in the original principal amount of \$35,000,000 (the “Term Note”). A true and accurate copy of the Term Note is included in Exhibit A and is incorporated by reference herein.

26. As of September 29, 2021, Debtors owed Lender approximately \$70,321,952.12 in principal, \$222,001.54 in interest and all other costs, fees, and obligations owing under the Loan Documents (the “Pre-Petition Indebtedness”). As security for repayment of the Lender Pre-Petition Indebtedness, as more fully described herein and the Loan Documents, the Debtors

granted to the Lender security interests in, and liens upon, substantially all of its assets, (collectively, the “Pre-Petition Collateral”).

27. As security for Debtors’ obligations to Lender under the Revolving Note and the Term Note (collectively the “Notes”), and the Loan Agreement, Debtors granted Lender a continuing security interest upon all property of Debtors, whether then owned or existing or thereafter created, acquired, or arising and wherever located, as described more particularly in Sections 6.1 of the Loan Agreement (the “Personal Property Collateral”). Exhibit A-1, § 6.1.

28. Lender properly perfected its security interest in the Personal Property Collateral by, among other things, filing:

a. that certain UCC financing statement number 20151812647A filed with the Mississippi Secretary of State on November 16, 2015, which was continued by that certain UCC continuation statement number 20203272625B filed with the Mississippi Secretary of State on June 29, 2020;

b. that certain UCC financing statement number 20151814275A filed with the Mississippi Secretary of State on November 17, 2015, which was continued by that certain UCC continuation statement number 20203386709B filed with the Mississippi Secretary of State on October 27, 2020;

c. that certain UCC financing statement number 20151814373A filed with the Mississippi Secretary of State on November 17, 2015, which was continued by that certain UCC continuation statement number 20203386710B filed with the Mississippi Secretary of State on October 27, 2020;

d. that certain UCC financing statement number 201825972229A filed with the Mississippi Secretary of State on May 7, 2018;

e. that certain UCC financing statement number 20182597224A filed with the Mississippi Secretary of State on May 7, 2018; and

f. that certain UCC financing statement number 20182597216A filed with the Mississippi Secretary of State on May 7, 2018,

(collectively, the “UMB Financing Statements”). True and accurate copies of the UMB Financing Statements are included in Exhibit A and are incorporated herein by reference.

29. As further security for Debtors’ obligations to Lender under the Notes and Loan Agreement, Debtors also granted Plaintiff a first-priority security interest in certain real and personal property owned by Debtor, pursuant to that certain Deed of Trust, Assignment of Leases and Rents and Fixture Filing from EGT for the benefit of Plaintiff, dated November 13, 2015, and filed of record November 13, 2015, in Deed of Trust Book 804, Page 97 in the Chancery Clerk’s Office for Leflore County (the “Greenwood and Minter City Deed of Trust”). The real property that is subject to the Greenwood and Minter City Deed of Trust is described more particularly in Exhibit A to the Greenwood Deed of Trust (the “Greenwood and Minter City Property”).

30. The Greenwood and Minter City Deed of Trust was amended by:

a. that certain Modification of Deed of Trust, Assignment of Leases and Rents and Fixture Filing dated as of May 7, 2018, and recorded May 10, 2018, in Deed of Trust Book 846, Page 324 in the Chancery Clerk’s Office for Leflore County (the “First Modification to Greenwood and Minter City Deed of Trust”);

b. that certain Second Modification of Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed March 13, 2019, and recorded March 19, 2019, in Deed of Trust Book 860, Page 420 in the Chancery Clerk’s Office for Leflore County (the “Second Modification to Greenwood and Minter City Deed of Trust”);

and

c. that certain Third Modification of Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed December 17, 2020, and recorded December 21, 2020, in Deed of Trust Book 2020, Page 5450 in the Chancery Clerk's Office for Leflore County (the "Third Modification to Greenwood and Minter City Deed of Trust").

True and accurate copies of the Greenwood and Minter City Deed of Trust, the First Modification to Greenwood and Minter City Deed of Trust, the Second Modification to Greenwood and Minter City Deed of Trust, and the Third Modification to Greenwood and Minter City Deed of Trust are included in Exhibit A.

31. As further security for Debtors' obligations to Lender under the Notes and Loan Agreement, Debtors also granted Lender a first-priority security interest in certain real and personal property owned by Debtors pursuant to that certain Deed of Trust, Assignment of Leases and Rents and Fixture Filing from Debtors for the benefit of Plaintiff, dated November 13, 2015, and filed of record November 13, 2015, in Deed of Trust Book 804, page 59 in the Chancery Clerk's Office for Leflore County (the "Sidon Deed of Trust").

32. The real property that is subject to the Sidon Deed of Trust is more particularly described in Exhibit A to the Sidon Deed of Trust (the "Sidon Property"). The Sidon Deed of Trust was amended by:

a. that certain Modification of Deed of Trust, Assignment of Leases and Rents and Fixture Filing dated as of May 7, 2018, and recorded May 10, 2018, in Deed of Trust Book 846, Page 314 in the Chancery Clerk's Office for Leflore County (the "First Modification to Sidon Deed of Trust");

b. that certain Second Modification of Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed March 13, 2019, and recorded March 19, 2019, in Deed of Trust Book 0860, Page 410 in the Chancery Clerk's Office for Leflore County (the "Second Modification to Sidon Deed of Trust"); and

c. that certain Third Modification of Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed December 17, 2020, and recorded December 21, 2020, in Deed of Trust Book 2020, Page 5441 in the Chancery Clerk's Office for Leflore County (the "Third Modification to Sidon Deed of Trust").

True and accurate copies of the Sidon Deed of Trust, the First Modification to Sidon Deed of Trust, the Second Modification to Sidon Deed of Trust, and the Third Modification to Sidon Deed of Trust as are included in Exhibit A.

33. EB has leased certain Personal Property Collateral and a portion of the Greenwood and Minter City Property from EGT. As further security for Borrowers' obligations to Plaintiff under the Notes and Loan Agreement, EB granted Plaintiff a first-priority security interest in its leasehold interest in such Personal Property Collateral and in a portion of the Greenwood and Minter City Property, pursuant to that certain Leasehold Deed of Trust, Assignment of Leases and Rents and Fixture Filing executed by EB for the benefit of Plaintiff, dated May 10, 2018, and filed of record May 10, 2018, in Deed of Trust Book 846, page 336 in the Chancery Clerk's Office for Leflore County (the "Leasehold Deed of Trust"). The real property that is subject to the Leasehold Deed of Trust is described in Exhibit A to the Leasehold Deed of Trust and consists of a portion of the Greenwood and Minter City Property (the "Leasehold Property"). The Leasehold Deed of Trust was amended by:

a. that certain Modification of Leasehold Deed of Trust, Security Agreement,

Assignment of Leases and Rents and Fixture Filing executed March 13, 2019, and recorded March 19, 2019, in Deed of Trust Book 0860, Page 432 in the Chancery Clerk's Office for Leflore County (the "First Modification to Leasehold Deed of Trust"); and

b. that certain Second Modification of Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed December 17, 2020, and recorded December 21, 2020, in Deed of Trust Book 2020, Page 5461 in the Chancery Clerk's Office for Leflore County (the "Second Modification to Leasehold Deed of Trust").

True and accurate copies of the Leasehold Deed of Trust, First Modification to Leasehold Deed of Trust, and Second Modification to Leasehold Deed of Trust are included in Exhibit A.

34. In exchange Lender's extension of credit to Borrowers, defendants John R. Coleman and Michael W. Coleman (together, the "Guarantors") executed that certain Third Amended and Restated Guaranty Agreement dated May 7, 2018, in favor of Lender (the "Guaranty"). A true and accurate copy of the Guaranty is included in Exhibit A.

35. In addition to its interests as a secured creditor, Lender holds title to 1,285,000 bushels of soybeans as a warehouse receipt holder. Debtors have issued the following warehouse receipts to UMB that remain outstanding:

a. A warehouse receipt ending in numbers 1046 for 300,000 bushels of soybeans;

b. A warehouse receipt ending in numbers 3138 for 385,000 bushels of soybeans; and

c. A warehouse receipt ending in numbers 3163 for 600,000 bushels of soybeans (collectively, the "UMB Warehouse Receipts").

VII. Terms of the DIP Facility

36. The terms of the DIP Facility are more fully set forth in the Order, Credit Agreement, the Fifth Amendment, and the Other Loan Documents. The material terms are summarized in the Debtors' Concise Statement set forth above.

37. Pursuant to the DIP Facility, Debtors are seeking a loan from Lender in the form of a revolving line of credit up to a maximum aggregate principal amount outstanding as of any day not to exceed \$30,300,000 and subject to a Borrowing Base and Budget (as more fully described in the Fifth Amendment and Interim Order). The Borrowing Base formula is included in the Fifth Amendment.

38. The DIP Facility shall continue through the earlier of March 17, 2022, or the closing of a sale of all or substantially all of the assets of the Debtors pursuant to a sale under Code § 363, unless terminated by Lender prior to this date following an Event of Default or otherwise pursuant to the terms of the Loan Documents or the Order.

39. Pursuant to Bankruptcy Code § 364(c) and (d), Debtors will grant to Lender a lien on all of its assets, as more fully described in the Order to secure the indebtedness represented by the DIP Facility, subject and junior to certain prior liens of third parties that exist pursuant to law which were properly perfected and are senior in priority to the liens of the Lender prior to the Petition Date. As additional security for the DIP Facility, Lender shall be accorded a limited super-priority administrative claim pursuant to Bankruptcy Code § 364(c)(1) with priority over all costs and expenses of administration subject to the limitations in the Interim Order.

40. The Liens and Super priority Claims granted to the Lender pursuant to the Loan Documents and the Order shall be subject and subordinate to several carve-outs including for certain professional fees incurred by professionals retained pursuant to Bankruptcy Code § 327 and quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to

the Clerk of the Bankruptcy Court, and a Chapter 7 trustee fee carveout as specifically provided by the terms and conditions of the proposed Interim Order and Loan Documents.

41. Lender is also seeking certain claim and lien validation. However, such validation is subject to a challenge period by non-Debtor parties.

VIII. Debtors' Efforts to Obtain Post-Petition Credit

42. Debtors do not have sufficient available sources of working capital and financing to operate its business in the ordinary course of business or operate its business and maintain its property in accordance with state and federal law and intends to consummate the sale of their business and assets as a going concern. In order to accomplish this task for the benefit of their creditors and Estate, Debtors have an immediate need for the financing. In the absence of the DIP Facility, the sale of Debtors' business and assets as a going concern would not be possible, and would cause serious and irreparable harm to Debtors and the Estate.

43. Given the Debtors' current financial condition, financing arrangements and capital structure, the Debtors cannot obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense. Debtors submit that financing on a post-petition basis is not otherwise available without the Debtors (i) granting, pursuant to Bankruptcy Code § 364(c)(1), claims having priority over any and all administrative expenses of the kinds specified in Bankruptcy Code §§ 503(b) and 507(b), other than as described above in respect of the Carve-Out, (ii) securing, pursuant to Bankruptcy Code §§ 364(c) and (d), such indebtedness and obligations with security interests in and liens on all of the Debtors' assets and the Pre-Petition Collateral as described below, and (iii) providing for adequate protection of the Lender's interests as described below.

44. Debtors have continued in the operation of its businesses since the Petition Date. Debtors must have financing to continue to purchase inventory, and to pay employee, rent and

utility expenses. Additionally, financing will allow the Debtors to immediately purchase soybeans to use in their crush operation, which will not only benefit farmers on a post-petition basis, but also alleviate the need to use the pre-petition bean supply. Debtors' cash position is such that, without the availability of immediate additional capital, Debtors cannot meet operating expenses necessary to achieve these objections. Termination of Debtors' operations would jeopardize the sale process, injure all of Debtors' creditors, both unsecured and secured, and could cost approximately several hundred employees their jobs. Accordingly, Debtors submit that the DIP Facility reflects the exercise of its sound business judgment.

45. The terms and conditions of the DIP Facility are fair and reasonable and were negotiated by well-represented, independent parties in good faith and at arms-length. Accordingly, the DIP Lender, and all obligations incurred under the Loan Documents, should be accorded the benefits of Code § 364(e).

IX. The Automatic Stay Should Be Modified On A Limited Basis

46. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to: (i) grant the security interests, liens and superpriority claims described in the Interim Order, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit the DIP Lender to exercise, upon the occurrence of and during the continuance of an event of default, all rights and remedies under the DIP Facility; and (iii) implement the terms of the proposed Interim Order.

47. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

X. Request for Interim Relief and Motion for Expedited Hearing

48. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to use cash

collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a Debtors' estate pending a final hearing.

49. Debtors request that the Court set an interim hearing on the approval of the DIP Facility and that at such interim hearing, the Court authorize the temporary use of the DIP Facility on an interim basis. An immediate need exists for Debtors to obtain approval of the DIP Facility in order to pay payroll, rent, utilities, and pay other ongoing expenses in the ordinary course of business and as identified in the Budget. Additionally, the immediate use of the DIP Facility will allow the Debtors to immediately purchase post-petition beans to be used operations and thus alleviate the ongoing need to use the pre-petition beans. Without the immediate use of the DIP Facility, Debtors' ability to operate its businesses will be severely impaired.

50. Prior to a final hearing, Debtors' use of the proceeds of the DIP Facility shall be consistent with the Budget in order to avoid immediate and irreparable harm to the Estate pending a final hearing. Debtors request that the Court also set a final hearing for the approval of the DIP Facility on January 7, 2022. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

51. The Debtors are cognizant that the Court may be reluctant to grant on an interim basis an Order that contains many of the provisions identified Local Rule 4001-1(b)(1)(A)(i)-(viii). The Debtors submit that extraordinary circumstances exist. In order to accomplish the objectives, they are in need of millions of dollars of liquidity. Absence the provisions being sought in the Interim Order, the Lender is not willing to extend the DIP Facility. Time is truly of the essence.

52. It should be noted, however, that the Interim Order tempers certain of the protections in which the Lender seeks and that such provisions are not patently unreasonable. For instance:

a. While the DIP Facility contemplates the pay down of pre-petition paydown of debt and a waiver of surcharge claims, many of the benefits of such provisions are mitigated. While Lender is requesting liens on Chapter 5 causes of action and super priority administrative claim, such liens and super priority claim extend only to a limited portion of the post-petition indebtedness that represents the difference between what was owed to the Lender on the Petition Date and the current amount outstanding to Lender at any given time. Further, causes of action under 11 U.S.C. § 549 are carved out of such liens and super priority claim. With respect to waiver of surcharge and binding a Chapter 7 estate, the Interim Order provides for several carveouts for UST Fees, professional fees, and a \$50,000 wind down carveout for a subsequent Chapter 7 trustee.

b. There has been great care in making sure that the various grain reserve accounts are adequately funded to account for post-petition grain usage and that Lender is not given any lien or priority advantage with respect to such segregated accounts. In that respect, a carveout has been established in order to make sure the segregated soybean reserve account is fully funded.

c. While the bankruptcy estates are providing certain claim and lien validation and releases, such provisions are subject to a challenge period by other parties. While the challenge period is not the typical 75 days referenced in the Local Rules, this case has been pending since September 29, 2021, and the Lender's loan documents have been filed with the Court and widely circulated to the parties over the past months. This is not a case where

the Debtors are seeking such relief on “first day” motions.

d. The liens being sought by the Lender provide for certain PMSI and certain other lenders to maintain priority in their collateral, to the extent they have valid and unavoidable liens.

e. The stay relief provisions provide a mechanism for expedited relief, but does not deprive the Debtor of due process and an ability to keep the stay in place.

To the extent not fully addressed herein, the Debtors and Lender will be prepared to further justify the various protections being granted to Lender under the proposed DIP Facility

XI. Notice

53. Debtors’ counsel shall serve this Motion and a copy of the proposed Order on all of the following parties via ECF or United States, first class mail, postage prepaid: (i) the Office of the United States Trustee, (ii) the attorneys for Lender, (iii) all creditors known to Debtors who have or may assert liens against Debtors’ assets, (iv) the United States Internal Revenue Service, (v) the 20 largest unsecured creditors of Debtors, and (vi) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Bankruptcy Rules or the Local Rules of the Northern District of Mississippi.

XII. Conclusion

54. Debtors have determined, in their business judgment, that using the DIP Facility is necessary to continue in business and achieve the objections identified at the beginning of this Motion. After exploring other options for post-petition financing, Debtors have concluded that the DIP Facility which Lender is willing to provide is the only credit, secured or unsecured, reasonably available to Debtors.

WHEREFORE, Debtors request that this Court enter an order:

- (1) setting a time and date for a final hearing on the approval of the DIP Facility;
- (2) approving the DIP Facility under the terms and conditions set forth herein and the Order; and
- (3) granting such other and further relief as may be just and proper.

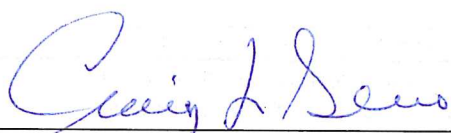
THIS, the 20th day of December, 2021.

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, Esq., MSB No. 4793
LAW OFFICES OF CRAIG M. GENO, PLLC
587 Highland Colony Parkway
Ridgeland, MS 39157
601-427-0048 – Telephone
601-427-0050 – Facsimile
cmgeno@cmgenolaw.com

CERTIFICATE OF SERVICE

Service provided via Notice of Electronic Filing (NEF) through ECF to all parties signed up to receive such notices, including the following:

Abigail M. Marbury, Esq. abigail.m.marbury@usdoj.gov	Eileen N. Shaffer, Esq. eshaffer@eshaffer-law.com
R. Spencer Clift, III, Esq. sclift@bakerdonelson.com	Kelli Norfleet, Esq. kelli.norfleet@haynesboone.com
R. Franklin Childress, Jr., Esq. fchildress@bakerdonelson.com	David W. Houston, IV, Esq. dhouston@burr.com
Eric L. Johnson, Esq. ejohnson@spencerfane.com	D. Andrew Phillips, Esq. aphillips@mitchellmcnutt.com
J. Walter Newman, IV, Esq. wnewman95@msn.com	Jim F. Spencer, Jr., Esq. jspencer@watkinseager.com
Derek Henderson, Esq. derek@derekhendersonlaw.com	Mr. Dennis Gerard dennis.gerrard@cr3partners.com

THIS the 20th day of December, 2021.



Craig M. Geno