

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

**IN RE: EXPRESS GRAIN TERMINALS, LLC<sup>1</sup>  
Debtor**

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

**DISCLOSURE STATEMENT**

**INTRODUCTION**

Express Grain Terminals, LLC (the “Debtor” or the “Debtor-in-Possession”) filed a Voluntary Petition for reorganization pursuant to Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Mississippi on September 29, 2021 (the “Petition Date”).

The Debtor provides this Disclosure Statement to all of the known creditors in this case in order to disclose information deemed by the Debtor to be material, important and necessary for the creditors to arrive at a reasonably informed decision in exercising rights to vote for acceptance of the Plan of Liquidation (the “Plan”) filed contemporaneously herewith.

This Disclosure Statement has been prepared by, and is submitted by and on behalf of, the Debtor. The Disclosure Statement must be approved by the Court, after notice and a hearing, prior to solicitation of acceptances for the Plan.

The information contained in this Disclosure Statement is made as of the date hereof, unless another time is specified. Neither the delivery of this Disclosure Statement, nor any exchange of rights and information made in connection herewith, nor any act in reliance hereon, should create under any circumstances an implication that there has not been a change in the facts underlying the statements set forth herein.

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<sup>1</sup>Jointly administered with *In re Express Biodiesel, LLC*, Case No. 21-11834-SDM and *In re Express Processing, LLC*, Case No. 21-11835-SDM.

No representations concerning the Debtor, the extent of its liabilities, the value of its properties and assets, or the value of any distributions offered to holders of claims or investor interests in connection with the Plan, are authorized except as specifically denominated in this Disclosure Statement.

This Disclosure Statement may not be relied on for any purpose other than to determine how to vote on the Plan, and nothing contained herein will constitute an admission of any fact or liability, or be admissible in any proceeding involving the Debtor or any other party, or be deemed to be advice on the tax or other legal effects of the Plan.

#### **INTRODUCTION AS TO DISCLOSURE STATEMENT/PLAN PROCESS**

In light of the significant developments that have occurred in this case with respect to settlement of claims, distribution of funds, resolution of complex litigation and related matters, this Disclosure Statement will be a greatly pared down process, limited to a brief description of prior activities, post-petition activities and distribution of the remaining funds and assets of the Debtor. There was extensive litigation pending that was resolved by consent (see Order at DK #2785). As a result, significant progress has been made with respect to disbursement of “contested” funds and litigation resolution.

In light of the consensual resolution of most of that litigation (as will be detailed hereinafter), the Debtor remains a Debtor-in-possession, but is only a shell of its former self. Its assets consist of cash (all of which is already promised to creditors and parties-in-interest with secured, administrative and priority claims) and various causes of actions that need to be asserted, prosecuted and liquidated to finality.

Accordingly, with the exception of a brief description of the Debtor’s beginnings and activities up until the case was filed, and a brief discussion of post-bankruptcy events, the Disclosure

Statement will not be a traditional Disclosure Statement in those areas. Additionally, because this is now a liquidating Chapter 11 case and the assets are known (including the unliquidated claims and causes of action which are known but not yet liquidated), there will be no discussion of cash flow projections, future profitability or other typical operational kinds of disclosures and analysis.

Finally, because so much of the post-petition activity in this case is controlled by orders that have been previously entered, the exhibits to the Disclosure Statement, while numerous in length, will simply be identified and not distributed to creditors, although instructions will be given as to how creditors may obtain a copy of them if they are interested.

#### **EXPLANATION OF CHAPTER 11 AND PLAN CONFIRMATION**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. But it may be used to facilitate an orderly liquidation, as is the case here. The formulation and confirmation of a reorganization plan are the primary goals of a Chapter 11 case. A reorganization plan is the vehicle for satisfying, to the extent possible, the claims against and interests in the Debtor.

Holders of claims and interests whose claims or interests are impaired by the Plan are afforded the opportunity to vote to accept or reject the Plan. A class of claims or interests is impaired if the claims or interests constituting that class are not paid in full or if the claims or interests are affected by the Plan. The Bankruptcy Court will determine whether the impaired classes have accepted the Plan by determining whether sufficient acceptances have been received from the holders of claims in such classes. An impaired class of claims will be determined to have accepted the Plan if the holders of Allowed Claims in that class casting votes in favor of the Plan (i) hold at least two-thirds in amount of the Allowed Claims of the holders in such class who actually vote on the Plan and (ii) comprise more than one-half the number of holders of the Allowed Claims in such class who actually vote on the Plan.

The vote of the class binds all members of the class. Thus, if a class votes to accept the Plan, the provisions of the Bankruptcy Code designed to protect rejecting classes cannot be invoked even by members of that class who voted to reject the Plan. Conversely, if a class rejects the Plan, the member of such class who voted to accept the Plan will be deprived of the benefits of the Plan if not confirmed. Each subclass is treated as a separate class for voting purposes.

The Bankruptcy Code does not require that every class of claims and interests vote in favor of the Plan. The Plan, however, must be accepted by at least one class of holders of claims or interests impaired under the Plan. The Bankruptcy Court may confirm the Plan notwithstanding the rejection of the Plan by one or more classes of claims or interests in what is inelegantly referred to as a “cram-down.” The criteria under which the Bankruptcy Court may Confirm the Plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Bankruptcy Code and, among other requirements, include the requirement that the Bankruptcy Court find, with respect to each class that does not accept the Plan, that the Plan does not discriminate unfairly against such class, that the Plan is fair and equitable as to such class, and that the value or benefits to be distributed to the members of such class will not be less than the members of that class would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. The treatment proposed by the Debtor for certain holders of claims not accepting the Plan is detailed in another Article of the Plan.

The Debtor believes that the Plan as proposed satisfies all of the statutory requirements imposed by Section 1129 of the Bankruptcy Code. Any objections to the Plan filed and prosecuted by a party in interest, however, may prevent or delay Confirmation if the Court allows the objection, or appeals of a denial of an objection are pursued.

## ARTICLE I

### DEFINITIONS

Unless otherwise defined, the capitalized terms contained in this Disclosure Statement shall have the same meanings as described in the Plan. All capitalized terms used in this Disclosure Statement not defined herein or in the Plan, but which are defined in the Bankruptcy Code, shall have the respective meanings ascribed in the Bankruptcy Code. All capitalized terms used but not defined in this Disclosure Statement, in the Plan or in the Bankruptcy Code shall have the respective meanings ascribed in the Bankruptcy Rules.

1. **“Allowed Claim”** means, as against the Debtor:
  - (a) A Claim that has been allowed by final Order of the Bankruptcy Court, or
  - (b) A Claim (i) scheduled as liquidated, undisputed and non-contingent by the Debtor in their Schedules as they may be restated, amended or supplemented, or (ii) timely filed with the Clerk of the Bankruptcy Court against which either there has been no objection made to the allowance thereof within the period of time fixed by the Bankruptcy Code, the Bankruptcy Rules or a Final Order of the Bankruptcy Court, or which has been allowed in whole or in part by a final Order of the Bankruptcy Court after either an objection to the Claim or an amendment of the Schedules.
2. **“Allowed Secured Claim”** means the Allowed Claim of a Secured Creditor to the extent that it is secured by a lien on property in which the Debtor has an interest as provided in Sections 506(a) and (b) of the Bankruptcy Code.

3. **“Bankruptcy Code”** or **“Code”** means Title 11 of the United States Code, as amended and effective in the Northern District of Mississippi on the Petition Date and includes, where applicable, the Bankruptcy Rules then in effect.

4. **“Bankruptcy Court”** or **“Court”** means the United States Bankruptcy Court for the Northern District of Mississippi exercising jurisdiction over this Chapter 11 reorganization case and any and all proceedings therein.

5. **“Claim”** is defined in Bankruptcy Code Section 101 (4).

6. **“Closing”** means the consummation of the transactions contemplated by the Plan.

7. **“Confirmation”** means the date the Court enters an order confirming the Plan.

8. **“Creditor”** is defined in Bankruptcy Code Section 101 (9).

9. **“Debtor”** or **“Debtor-in-Possession”** means Express Grain Terminals, LLC.

10. **“Effective Date of the Plan,”** or **“Effective Date,”** means sixty (60) days after entry of an order confirming the Plan of Liquidation in this Chapter 11 case is final and non-appealable.

11. **“Final Order”** means any order of the Court which is no longer subject to appeal or review.

12. **“Fully Secured Creditor”** means any Secured Creditor designated as such in the Disclosure Statement whose Allowed Claim is less than the value of the collateral securing its Claim.

13. **“Partially Secured Creditor”** means any Secured Creditor designated as such in this Disclosure Statement whose Allowed Claim is greater than the value of the collateral securing its Claim.

14. **“Petition Date”** means the date of the filing of the Debtor’s petition which was September 29, 2021.

15. **“Plan”** means a Plan of Liquidation filed by the Debtor and as it may be modified, reinstated and amended from time to time.

16. **“Pro-Rata”** means the same proportion that a Claim or an Allowed Claim in a particular Class bears to the aggregate amount of all Claims or Allowed Claims in said Class.

17. **“Reorganized Debtor” or “Debtor-in-Possession”** means the Debtor and this Chapter 11 case after Confirmation and Closing.

18. **“Schedules”** means the Statement of Financial Affairs and the Schedules of debts and assets filed by the Debtor with the Bankruptcy Court in this Case, as amended, reinstated or supplemented from time to time.

19. **“Secured Creditor”** means those Creditors which possess valid and perfected liens against any assets of the Debtor, including, but not limited to, fully Secured Creditors and Partially Secured Creditors.

20. **“Unsecured Claim”** means an Allowed Claim for which no property of the Debtor or the Debtor’s estate serves as security or collateral.

21. **“Unsecured Creditor”** means a person, corporation, partnership or other entity that holds an Unsecured Claim against the Debtor.

## **ARTICLE II**

### **DESCRIPTION OF THE DEBTOR**

#### **A. History and Background**

Debtor was a large agricultural processing, storage facility and marketing company headquartered in Greenwood, Mississippi. It operated three facilities in Minter City, Sidon and Greenwood, Mississippi, in which it stored, warehoused, manufactured, marketed and distributed a variety of products including stored corn, stored soybeans, soybean oil, high protein soybean meal,

soybean hulls and pellets, and biodiesel. At the time the Petition was filed, the biodiesel operations were not in an active manufacturing status, nor were they through the sale of assets (as described hereinafter).

**B. Significant Events During the Reorganization.**

A copy of the docket report in this case, obtained from PACER, is referenced herein as **Exhibit “A”**<sup>2</sup>. It reflects all filings in this case.

Unfortunately, the Debtor had engaged in a pattern of fraudulent representation of its assets and operations in financial documents that were filed with the State of Mississippi and, in particular, the Mississippi Department of Agriculture (the “DofA”). Under Mississippi law, the Debtor was obligated to acquire grain warehouse and dealer licenses through the DofA. In the latter part of 2021, the DofA was notified, apparently by a representative of Horne, LLP (“Horne”), Debtor’s auditing and accounting firm, that there was a possibility that the financial records and documents the Debtor submitted to the DofA, in support of its applications for renewal of its grain warehouse and dealer licenses had been altered, manipulated and falsified, when compared to the documents that Horne had actually prepared.

The DofA conducted its internal administrative hearing with respect to whether or not the financial documents submitted to it had been altered or amended to represent a false picture of the Debtor’s financial condition and subsequently filed a *Motion for Relief from Automatic Stay* (the “Motion for Relief”) [DK #1526], with the Bankruptcy Court, seeking to have the Court enter an order lifting the automatic stay and implementing whatever findings the DofA made at the hearing in connection with the revocation of the grain warehouse and dealer licenses.

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<sup>2</sup> Most exhibits are not actually attached in order to save costs. They are available on PACER or by contacting Katie Carter at (601) 427-0048 or [kcarter@cmgenolaw.com](mailto:kcarter@cmgenolaw.com).



The Motion for Relief was heard by the Court on February 7, 2022, and the Court entered its *Memorandum Opinion and Order Granting in Part and Denying in Part Motion for Relief from the Automatic Stay* [DK#2695], in which the Court noted that the Commissioner of Agriculture, Andy Gipson, (the “Commissioner”) testified, based upon his findings as the presiding officer at the DofA administrative revocation proceedings, that the grain warehouse and dealer licenses were obtained through materially altered financial audit reports, that the audit reports were “fake” and “false” and amounted to forgery. The Commissioner further testified that “but for” the altered financial and audit reports, licenses would not have been issued or renewed for the Debtor to operate. The Commissioner requested the Bankruptcy Court issue an order revoking the licenses and that the licenses should be retroactively revoked because they were obtained by fraud.

Consistent with the bench opinion that the Court rendered on February 9, 2022, the Court in its written order, granted relief from the automatic stay so that the State of Mississippi could, in fact, revoke the Debtor’s licenses and it obtained physical possession of them subsequently.

Prior to the Motion for Relief and the litigation concerning the warehouse and dealer licenses, the Debtor, upon the filing of the Petition in this case, immediately moved for an order authorizing the use of cash collateral. An interim order was entered after notice and a hearing, and the Court scheduled a subsequent interim hearing on use of cash collateral. In the meantime, the Debtor sought Court approval for the employment of CR3 Partners, LLC (“CR3”) as restructuring advisors and, specifically, sought the engagement of Dennis Gerrard (“Mr. Gerrard”) as Chief Restructuring Officer (“CRO”). After a series of heavily contested hearings, the Court ultimately appointed Mr. Gerrard as the CRO, a position in which he had served as interim CRO from early in the case until the order appointing him, as a final matter, as the CRO.

The Court conducted additional hearings on a series of requests for use of cash collateral throughout substantially all of the “operational” phase of this Chapter 11 case, with all of them (perhaps with the exception of the last one) being vigorously opposed by many of the farmers (and farm-related groups) and the production lenders who had financed many of the farmers’ 2021 soybean and corn crops. The Court granted all of the requests for cash collateral, with numerous limiting conditions and reporting requirements that were the obligations of CR3. The Debtor, through CR3, operated its business, and obtained capital for those operations as a result of the cash collateral orders entered by the Court.

Creditors also filed, prosecuted and obtained approval of a motion seeking to invoke various procedures under 11 U.S.C. § 557 in order to establish a process to determine the disputed ownership of, and security interests in, the soybeans and corn that had been delivered to the Debtor in crop year 2021, as to the proceeds thereof with respect to sales of the soybeans and corn and with respect to the proceeds of the manufacturing process involving the crushing of soybeans into soybean meal, soybean oil and the related byproducts of soybean hulls. On January 31, 2022, the Court entered the *Amended Section 557 Procedures - Phase 2 Scheduling Order* [DK #1800], establishing parameters for an expedited discovery process and final determination hearing in order to resolve the common legal issues that existed under 11 U.S.C. § 557. The history of the 557 procedures, and the resolution thereof, is set forth in a *Memorandum Opinion and Order Approving Joint Application to Compromise Controversy* (the “Settlement Order”) [DK #2785]. Essentially, after spending literally millions of dollars in professional fees and expenses, the parties, in large part through the mediation efforts of William H. Brown, former U.S. Bankruptcy Judge, reached a settlement and compromise as to substantially all of the 557 issues, disposition and distribution of the cash proceeds which had been received from the sale of soybeans and corn, and received from the manufacturing and

“crushing” operations of the soybeans, together with collections of accounts receivable produced as a result.

Because the Settlement Order is as pervasive as it is with respect to distribution of the cash in the case, as well as the settlement and compromise of literally hundreds of claims, this Disclosure Statement has necessarily been shortened and simplified to reflect “what is left” with respect to assets and “what is left” to do to finish this case, distribute the remaining proceeds that are left and close the case.

As noted, the Debtor has elected not to attach copies of the many orders that have been entered in the case but has briefly referred to them here.

In addition to the 557 Settlement Order, the Debtor filed, and prosecuted successfully, a *Motion to Sell Substantially All of the Assets Owned by Express Grain Terminals, LLC, Free and Clear of Liens, Claims and Interests, with Liens Attaching to Proceeds of Sale, Outside the Ordinary Course of Business* (the “Sale Motion”) [DK #2024]. The Court granted the Sale Motion, after modifications, in an *Order Granting Motion to Sell Substantially All of the Assets Owned by Express Grain Terminals, LLC, Free and Clear of Liens, Claims and Interests, with Liens Attaching to Proceeds of Sale, Outside the Ordinary Course of Business* (the “Sale Order”) [DK #2708] on April 11, 2022. In summary, the Sale Order provided that UMB Bank, N.A. (“UMB”) was the successful and highest and best bidder for substantially all of the tangible assets of the Debtor, excluding cash, accounts receivable, various causes of action and other assets that were not of significant value. The Debtor and UMB provided an orderly transition of the sale of the assets from the Debtor to UMB through a transition services agreement that was approved by the Court<sup>3</sup>.

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<sup>3</sup> There were other purchasers for specific assets, other than UMB.

Ultimately, the assets purchased by UMB have been sold or otherwise disposed of by third parties who are operating the Debtor's grain warehouse and storage facilities in Sidon and Minter City, Mississippi, and (through a separate entity) assets at Greenwood that are the "manufacturing" operations.

So, what is left? The Debtor has in savings accounts or escrows proceeds from the sale of golf carts, liquidation of the Debtor's prior hedge fund, sale of rolling stock, collection of accounts receivable, surcharge funds, funds that have been carved out for specific purposes, a few miscellaneous and isolated assets that were not sold or transferred to UMB (or to other purchasers), Chapter 5 avoidance causes of action and other claims and causes of action, including collection of accounts receivable and, perhaps, directors and officers claims against one of the Debtor's officers and majority shareholder.

The Chapter 5 causes of action are, in large part, established as part of the Debtor's Statement of Financial Affairs that list transfers made within ninety (90) days and additional transfers made to insiders over a longer period of time, a copy of which is actually attached, incorporated by reference and marked as **Exhibit "B"** [DKs #1694, 1701]. The Debtor will pursue those same claims and causes of action during the Disclosure Statement/Plan of Liquidation phase of this case and then will pursue them thereafter as well. The Debtor has pending accounts receivable litigation against ARBio International, LLC, J and J Bagging (settled and paid in full), LLC, SME Dublin, LLC and Wilkerson's Trucking, Inc. The Debtor has a large accounts receivable claim against Cal-Maine Foods, Inc., which it is attempting to also resolve but if not, that claim will be litigated as well.

The Debtor may have a directors and officers violation of fiduciary and related duty claim against its majority shareholder and officer, Dr. Michael Coleman. The Debtor continues to evaluate that claim and reserves the right to pursue it for the benefit of unsecured creditors, post-confirmation.

After the Petition was filed, the Debtor filed a significant number of motions to require various farmers to assume open, executory contracts calling for the sale of grain. Many of those motions have been settled and resolved as a result of the entry of the Settlement Order, so that farmers who elected to be included within Group 1 of the settlement (as set forth in the 9019 motion and the Settlement Order) or in Group 2 (as also set forth in the 9019 motion and the Settlement Order), all of those farmers as to whom motions to assume executory contracts were directed will be released from any obligations under those motions and executory contracts, which will include not only farmers actually specifically named in the motions to assume but affiliates of those farmers who might have been farming under names other than those directly electing to be placed in Group 1 or Group 2. Many of the named farmers or farming entities in the motions to assume were not specifically named as to the farmers who elected to be included in Groups 1 or 2, but the settlement will cover all of the farmers (or their affiliates or entities) named in the motions to assume executory contracts who participated in Groups 1 or 2. As to farmers not responding to the motions to assume executory contracts, the Debtor will pursue those, post-confirmation. The remaining motions to assume executory contracts will be dismissed or withdrawn with approval from Debtor's counsel and counsel for the farmers and farm entities.

The Debtor also asserts an ownership interest in cash or cash equivalents that may remain in the "related" cases of Express Biodiesel, LLC, Case No. 21-11834-SDM, and Express Processing, LLC, Case No. 21-11835-SDM.

**As to creditors named in Exhibit "B": you are put on notice that the Debtor specifically names you as a potential target defendant and the recipient of an avoidable transfer. These claims will be evaluated during the Disclosure Statement/Plan process, some claims may be prosecuted during that process and some claims may be prosecuted thereafter. If you desire**

to express any defense you believe you may have to those claims that are listed in Exhibit “B” you are free to do so (but not required) in the interim Disclosure Statement/Plan process.

**C. Assets of the Debtor**

The Debtor’s assets, at the time of the filing of the case, are reflected on Schedules A and B, which are referenced herein as Exhibit “C”, [DK #1695].

Because the sale of assets has resulted in significant elimination of substantially all of the “hard”, tangible assets of the Debtor, and the distribution of the cash proceeds thereof, the assets section is not to be relied upon but is merely placed here for historical purposes. Similarly, substantial payments have been made to creditors under the Settlement Order, and the statement of liabilities summary is for historical purposes only.

**D. Liabilities of the Debtor**

The Debtor’s secured and unsecured liabilities are reflected in Schedules D, E and F, which are referenced herein as Exhibit “D”, [DKs #979, 1695].

Because the sale of assets has resulted in significant reduction of liabilities through the distribution of the cash proceeds thereof, the liabilities section is not to be relied upon but is merely placed here for historical purposes.

**ARTICLE III**

**DESCRIPTION OF THE PLAN**

**A. Introduction**

The Plan is a legally binding document which imposes its terms on all Creditors. Once the Plan is confirmed by the Bankruptcy Court, all parties affected by the Plan have their rights altered as provided in the Plan. The following is a brief summary of the material provisions of the Plan.

**B. Concept of the Plan**

The concept of the Plan is simple: the Debtor will go about the business of litigating and collecting all of the claims and causes of action that are owed to it, pursuant to the appointment of a liquidating trustee, which the Debtor suggests should be Heather Williams, a duly-qualified and experienced employee of CR3. Ms. Williams is already familiar with the Debtor's business, its operations during the latter phase of active manufacturing operations, the 557 procedures, the 9019 motion and the Settlement Order. Ms. Williams will actually be the plaintiff and "holder" of title to assets of the Debtor once she is appointed, assuming the Court sees fit to do so.

**C. Classification and Treatment of Claims and Interests**

The Plan divides the claims against and interests in the Debtor into various classes pursuant to Bankruptcy Code Section 1122. Set forth below is a description of the general classes of claims against and interests in the Debtor and their treatment under the Plan. A claim or interest is classified in a particular class only to the extent that the claim or interest qualifies within the description of the class and is classified in a different class to the extent that the claim or interest qualifies within the description of that different class.

- Class 1: Administrative Claims**
- Class 2: Priority Claims**
- Class 3: Secured Claims of Bank of the West ("BOTW")**
- Class 4: Secured Claims of BankPlus ("BankPlus")**
- Class 5: Secured Claims of CAT Financial ("CAT")**
- Class 6: Secured Claims of CAT Financial ("CAT")**
- Class 7: Secured Claims of Chase Auto ("Chase")**
- Class 8: Purported Secured Claims of Scott Financial Services ("Scott")**

**Class 9: Secured Claims of UMB Bank, N.A. (“UMB”)**

**Class 10: Unsecured Convenience Creditors**

**Class 11: General Unsecured Creditors**

**Class 12: Equity Security Interest**

#### **ARTICLE IV**

#### **TREATMENT OF CLAIMS AND INTERESTS**

The claims as classified in Article IV shall be satisfied as follows:

**Class 1: Administrative Claims**

This Class consists of the administrative expenses and claims of professionals and of the United States Trustee under § 503(b) of the Bankruptcy Code and all fees and charges assessed against the Debtor under Title 28 of the United States Code. The compensation of professionals, such as attorneys and accountants, is subject to approval by the Court. The timing of payment to such professionals for compensation for services rendered and reimbursement of expenses will be made as authorized and allowed by the Court. The Court will review all requests for compensation and reimbursement of expenses.

All Class 1 expenses and claims for fees will be paid as provided for in future Court Orders, or as may be agreed upon, except that fees due to the Office of the United States Trustee will be paid as and when due until this Case is closed, converted or dismissed.

Currently, there is not enough cash to pay for the administrative expense claims in full. Payment in full of those claims, especially when considering that substantial cash held by counsel for the Debtor has been carved out and earmarked only for payment of certain claims, and that there are likely a number of administrative expense claims which have not yet been filed and which are not yet known, is not yet firm or a sure thing. Accordingly, the Debtor must provide that allowed



administrative expense claims will not necessarily be paid in full, in cash, at confirmation, but will be paid as and when cash is available to pay them.

**Class 2: Priority Claims**

Priority claims will be paid within sixty (60) months from the Effective Date of the Plan, in equal monthly installments of principal and statutory interest so as to fully pay the priority claims over the sixty (60) month amortization period.

Currently, there is probably not enough cash to pay for the priority claims in full. Payment in full of those claims, especially when considering that substantial cash held by counsel for the Debtor has been carved out and earmarked only for payment of certain claims, there are likely a number of priority claims which have not yet been filed and which are not yet known. Accordingly, the Debtor must provide that allowed priority claims will not necessarily be paid in full, in cash, at confirmation, but will be paid as and when cash is available to pay them.

**Class 3: Secured Claims of Bank of the West (“BOTW”)**

The Secured Claims of BOTW were secured by a JLG1500SJ4XD8 Articulated Boom Lift. BOTW credit bid on the boom lift at the auction of substantially all of the Debtor’s assets and was the highest and best bid in connection with the boom lift. *An Agreed Order [DK #2219]* was entered authorizing the sale of the boom lift to BOTW, so its Secured Claims have been paid in full.

**Class 4: Secured Claims of BankPlus (“BankPlus”)**

The Secured Claims of BankPlus were secured by a 2019 Dodge Ram 1500. *An Agreed Order [DK #2690]* was entered lifting the stay on the vehicle and authorizing BankPlus to foreclose on its collateral, so its Secured Claims have been paid in full.

**Class 5: Secured Claims of CAT Financial (“CAT”)**

The Secured Claims of CAT were secured by a Caterpillar TL 1055 Telehandler. CAT credit bid on the telehandler at the auction of substantially all of the Debtor’s assets and was the highest and best bid in connection with the telehandler. An *Agreed Order* [DK #2907] was entered authorizing the sale of the telehandler to CAT, so its Secured Claims have been paid in full.

**Class 6: Secured Claims of CAT Financial (“CAT”)**

The Secured Claims of CAT were secured by a CAT 926M Small Wheel Loader. CAT credit bid on the wheel loader at the auction of substantially all of the Debtor’s assets but the highest and best bid in connection with the telehandler was submitted by Roebuck Landing Grain Terminal, LLC (“Roebuck”). An *Agreed Order* [DK #2218] was entered authorizing the sale of the wheel loader to Roebuck, so the Secured Claims of CAT have been paid in full.

**Class 7: Secured Claims of Chase Auto (“Chase”)**

The Secured Claims of Chase were secured by a 2019 Chevrolet Silverado. An *Agreed Order* [DK #2636] was entered authorizing the Debtor to sell the truck for at least \$24,000, or Chase would repossess the truck. The truck was sold, so the Secured Claims of Chase have been paid in full.

**Class 8: Purported Secured Claims of Scott Financial Services (“Scott”)**

Apparently, the purported Secured Claims of Scott were not secured by a 2015 Tadano Crane, and the crane has been sold. Scott’s claim is not secured.

**Class 9: Secured Claims of UMB Bank, N.A. (“UMB”)**

UMB asserts liens on various proceeds (as outlined in the Settlement Order and the 9019 motion and related papers). There may also be certain assets that are subject to the UMB lien that were not sold as part of the Sale Motion and Sale Order. The Debtor will continue to liquidate those

assets, and pay such funds as to which UMB is entitled on or before the Effective Date of the Plan and thereafter as funds become available and are not used otherwise.

**Class 10: Unsecured Convenience Creditors**

Unsecured claims totaling less than \$2,500 will be paid in full, in cash, upon the Effective Date at the rate of 15% of the allowed amount of those claims. The 15% payment will be in full satisfaction of those claims.

**Class 11: General Unsecured Creditors**

Unsecured creditors in this case will receive, upon the final distribution in this case, all remaining cash which has not been used to pay prior Classes.

**Class 12: Equity Security Interest**

The equity security interests will be cancelled, terminated and held for naught upon the Effective Date of the Plan.

**ARTICLE V**

**ALTERNATIVE TREATMENT FOR CERTAIN CLASSES OF CREDITORS**

In the event any impaired class of creditors or holders of Interests shall fail to accept the Plan in accordance with Section 1129(a) of the Bankruptcy Code, the Debtor reserves the right to request that the Bankruptcy Court confirm the Plan in accordance with the provisions of Section 1129(b) of the Bankruptcy Code. In that event, any class of holders of claims or interests which is impaired and does not accept the Plan in accordance with the provisions of Section 1126 of the Bankruptcy Code shall be treated in a fair and equitable fashion and shall not be subject to unfair discrimination under the Plan, so that the provisions of Section 1129(b) of the Bankruptcy Code will be satisfied.

## **ARTICLE VI**

### **MEANS FOR EXECUTION AND IMPLEMENTATION OF PLAN**

#### **A. The Liquidating Trust**

As specified in more detail in Article VII herein, the Plan will establish the Express Grain Liquidating Trust for the purpose of receiving and liquidating the Debtor, its property and assets, and distributing funds to holders of claims and interests. On the Effective Date, all property and assets of the Debtor and the Debtor's estate shall constitute trust assets, specifically including all of the Debtor's claims and causes of action retained pursuant to § 1123(b)(3)(B) of the Bankruptcy Code, and shall, without further action on the part of any party be deemed: (a) to be merged with and into the pool of property and assets constituting the trust assets; and (b) to be transferred to and vested in the Liquidating Trust free and clear of all liens, encumbrances, claims and interests, except for those claims and interests specifically provided for under the Plan or the Confirmation Order.

#### **B. The Liquidating Trustee**

The Debtor has selected Heather Williams, of CR3, as the Liquidating Trustee.

#### **C. Dissolution of the Debtor**

On the Effective Date, (a) all existing equity shall, without further act or action by any party, be cancelled, annulled and extinguished, and any certificates representing such cancelled, annulled and extinguished equity shall be null and void, except as set forth in Article IV; and (b) the Debtor shall be deemed dissolved. As soon following the Effective Date as practicable, on behalf of the Debtor, the Liquidating Trustee shall (i) execute and file, or cause to be executed and filed, such articles or certificates of dissolution, and such other documents as are necessary to effect, complete or evidence the dissolution (of the Debtor/Liquidating Trust) under the applicable laws of the State of Mississippi, and (ii) file any required, final federal, state and local tax returns, and take such other

action as shall be necessary or appropriate to effect a final determination of any amounts of federal, state or local taxes owed by the Debtor.

**D. Discharge of Officers and Directors**

On the Effective Date, any then-currently serving directors, officers, managers or other members of any governing body of the Debtor will be discharged and removed from any office, directorship, position as manager or member or other position held by any such person with the Debtor, and will be relieved of any further duties or obligations with respect to the Debtor, except as specifically provided in the Plan.

**E. Effectuating Documents and Further Transactions**

The Liquidating Trustee will be authorized to execute, deliver, file and record such contracts, instruments, assignments, conveyances, bills of sale, releases, indentures, certificates and any other agreement or document and take such action reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, without the need for further action by the board of directors or other managing body of the Debtor.

**F. Exempt from Transfer Taxes**

Pursuant to § 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer under the Plan will not be taxed under any law imposing a stamp tax or other similar tax.

**G. Injunction**

Except as otherwise expressly provided in the Plan or the Confirmation Order, all entities who have held, hold or may hold claims against or interests in the Debtor, are permanently enjoined, on and after the Effective Date, from (a) commencing or continuing in any manner any action or proceeding of any kind with respect to any such claim or interest, (b) the enforcement, attachment,

collection or recovery by any manner or means of any judgment, award, decree or order against the Debtor on account of any such claim or interest, (c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor or against property or interests of the Debtor on account of such claim or interest, and (d) asserting any right of setoff, subrogation or recoupment of any kind against the Debtor on account of any such claim or interest. Such injunction shall extend to successors of the Debtor (including, without limitation, the Liquidating Trust) and their respective properties or interests in property.

#### **H. Preservation of Causes of Action**

Except as provided in the Plan, as of the Effective Date, pursuant to § 1123(b)(3)(B) of the Bankruptcy Code, any and all claims and causes of action accruing to the Debtor and the Debtor-in-possession, including, without limitation, all avoidance actions described in Chapter 5 of the Bankruptcy Code, will become trust assets, and the Liquidating Trust, as the duly appointed representative of the Debtor's estate for the purpose of retention and enforcement of such claims and causes of action, will have the authority to prosecute, compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such claims and causes of action without approval of the Bankruptcy Court, for the benefit of the Debtor's estate and the Liquidating Trust's beneficiaries.

### **ARTICLE VII**

#### **THE EXPRESS GRAIN LIQUIDATING TRUST**

##### **A. The Creation of the Trust; Funding of the Trust**

###### **1. Creation of the Trust**

On the Effective Date, and pursuant to the Plan and the Confirmation Order, a trust will be created under the laws of the State of Mississippi for the purposes of (a) liquidating the assets of the Debtor and satisfying claims against the Debtor and (b) if and to the extent required, to fund the

winding down of the Chapter 11 Case. For federal income tax purposes, it is intended that the Liquidating Trust will be treated as a “liquidating trust”, as defined in Treasury Regulation Section 301.7701-4(d), that comes into existence as of the Effective Date. The Liquidating Trust will not engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Debtor has designated Heather Williams to serve as the initial Liquidating Trustee, subject to the Bankruptcy Court’s approval at the Confirmation Hearing. The Liquidating Trustee shall receive any and all assets coming into or becoming part of the Liquidating Trust and distribute them to the beneficiaries the amount of net proceeds or net income of the Liquidating Trust in excess of amounts reasonably necessary to maintain the value of the trust assets or to meet claims and contingent liabilities consistent with the terms of the Plan. The Plan shall serve as the trust instrument and no other trust instrument shall be prepared or entered into. For all purposes of the Internal Revenue Code: (i) the beneficiaries of the Liquidating Trust will be treated as the grantors of the Liquidating Trust and deemed owners of the trust assets and will be taxed on their allocable shares of the Liquidating Trust’s income and gain in each taxable year, whether or not they receive any distributions in such year; and (ii) all parties hereto or bound hereby shall treat the transfers in trust as if all the transferred assets including, without limitation, all the trust assets, had been first transferred to the beneficiaries of the Liquidating Trust and then transferred to the Liquidating Trust as a grantor trust pursuant to Section 1.67-4(a) of the Federal Income Tax Regulations. For purposes of the Bankruptcy Code, however, the foregoing shall not be deemed to modify or otherwise affect other provisions of the Plan for: (i) the transfer to and vesting in the Liquidating Trust of all the trust assets including, without limitation, all claims and causes of action; and (ii) the retention and enforcement by the Liquidating Trustee, as a representative of the Debtor’s estate pursuant to § 1123(b)(3)(B), of all

claims, causes of action or any other of the trust assets. The beneficiaries of the Liquidating Trust shall be the holders of Allowed Claims in Classes 1 - 11.

## **2. Funding of Res of Liquidating Trust**

To fund the Liquidating Trust, by operation of the Confirmation Order, the Liquidating Trustee, as the duly appointed representative of the Debtor's estate pursuant to § 1123(b)(3)(B), shall be in possession of and have title to the trust assets as of the Effective Date, and all documents evidencing and relating to the ownership of such trust assets. All cash, accounts receivable, and claims and causes of action of the Debtor shall be deemed, as of the Effective Date, to have been transferred to and vested in the Liquidating Trust. The transfer and vesting of all trust assets to the Liquidating Trust shall be accomplished pursuant to the Plan and the Confirmation Order and shall be effective upon the Effective Date, without the need of further documentation or instruments of conveyance, other than the Plan and the Confirmation Order. Upon the Effective Date, such trust assets transferred to and vested in the Liquidating Trust shall be deemed to include among other things: (a) claims and causes of action of the Debtors, including, but not limited to, all rights or causes of action in which a Debtor may own an interest against third parties for obligations existing on the Effective Date, unless expressly released herein, (b) all bank accounts containing cash in the possession of one or more of the Debtors, and (c) all other assets of the Debtor, without the need for any assignment, bill of sale, deed and/or release. The Liquidating Trustee may present such orders as may be necessary to require third-parties to accept and acknowledge such transfer to and vesting in the Liquidating Trust. Such orders may be presented without further notice other than as has been given in the Plan.



### **3. Name of Liquidating Trust**

The Liquidating Trust shall be known as the “Express Grain Liquidating Trust.” The Liquidating Trust may operate under any other name the Liquidating Trustee deems advisable.

#### **B. Means for Implementation of Liquidating Trust**

On the Effective Date and pursuant to the Plan and the Confirmation Order, without the need of additional documentation, the trust assets, including but not limited to any and all claims and causes of action, shall be deemed to have been transferred to and vested in the Liquidating Trust. Through such vesting, any and all claims and interests belonging to the Debtor or to its estate with regard to such trust assets, including but not limited to all claims and causes of action, other than claims and causes of action waived and/or released under the Plan, shall, pursuant to (i) Bankruptcy Code Section 1123(b)(3)(B), (ii) the Plan and (iii) the Confirmation Order, be retained and enforced by the Liquidating Trustee as the duly appointed representative of the Debtor’s estate.

The Liquidating Trustee may prosecute, settle or dismiss any and all such claims and causes of action as the Liquidating Trustee sees fit and all proceeds therefrom shall be the property of the Liquidating Trust, except as expressly released within the Plan. The Debtor, professionals and other professional advisors shall have no liability for pursuing or not pursuing any such claims and causes of action vested in the Liquidating Trust pursuant to the Plan.

All trust assets shall be vested in the Liquidating Trust free and clear of all liens, claims and encumbrances, except as otherwise provided in the Plan. Any party having a lien, claim, or encumbrance against property included among the trust assets shall be conclusively deemed to have consented to the transfer of such property to the Liquidating Trust free and clear of such lien, claim, or encumbrance by failing to object to confirmation of the Plan.

The Liquidating Trustee shall be appointed as the representative of the Debtor's estate for purposes of prosecuting and defending any and all rights, claims, or causes of action, including, but not limited to, actions arising pursuant to Chapter 5 of the Bankruptcy Code, whether known or unknown, asserted or unasserted, at law or equity, and whether arising pursuant to the Bankruptcy Code or other applicable law, except claims and causes of action waived and/or released under the Plan.

**C. Insurance Policies and Insured Claims**

The Liquidating Trust shall succeed to the interests of the Debtor with respect to claims against, and interests in, insurance policies, the assertion of insured claims and the assertion of claims against insurers.

**D. Corporate Authority**

All actions and transactions contemplated under the Plan, including, but not limited to, the documents to be executed conveying the trust assets to the Liquidating Trust, shall be authorized upon Confirmation of the Plan without the need of further board, stockholder, partner, manager or member resolutions, approval, notice or meetings. Upon the Effective Date, the Liquidating Trustee is vested with authority to take any action on behalf of the Debtor that would otherwise require the approval of the shareholders, partners, managers, members, board of directors, or officers of the Debtor.

**E. Trust Authority to Prosecute Causes of Action**

Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, the Liquidating Trustee shall have, for the benefit of and on behalf of all beneficiaries of the Liquidating Trust, the full power, authority and standing to prosecute, compromise or otherwise resolve any claim or cause of action, and any other cause of action that constitutes a trust asset, except claims and causes of action waived

and/or released under the Plan, with all proceeds therefrom to become property of the Liquidating Trust and distributed in accordance with the Plan. The Liquidating Trustee shall have the exclusive right to enforce any and all claims, causes of action and other causes of action against any person, and rights of the Debtor that arose before or after the Petition Date, including but not limited to the rights and powers of a trustee and/or debtor-in-possession against any person whatsoever, including but not limited to, all avoidance actions, except claims and causes of action waived and/or released under the Plan. The Liquidating Trust or Liquidating Trustee shall be substituted as a plaintiff in all lawsuits pending in which the Debtor is a plaintiff. The Liquidating Trust and Liquidating Trustee shall not be subject to any counterclaims with respect to any claim or cause of action or any cause of action constituting trust assets; provided, however, that any claim or cause of action, and any other cause of action constituting trust assets will be subject to any set-off and/or recoupment rights to the same extent as if the Debtor itself had pursued such action.

The Liquidating Trustee, on behalf of the Liquidating Trust, shall also have the right to examine and object to any claims in the Debtor's case.

**F. Liquidate or Abandon all Assets and Distribute Proceeds**

The Liquidating Trustee shall sell, transfer, assign, convey, lease, use, or otherwise liquidate all assets of the Liquidating Trust to pay Allowed Claims, as designated within the Plan. The Liquidating Trustee may dispose in any appropriate manner any asset deemed to be of inconsequential value or burdensome to the Liquidating Trust, so long as not in contravention of applicable laws. The proceeds of such liquidation shall be distributed as provided in the Plan. Property shall be deemed under the terms of the Plan to be of inconsequential value or burdensome to the Liquidating Trustee if, in the Liquidating Trustee's opinion, the disposal or sale of such property would cost as much as or more than the value received from such disposal. The Debtor has

not identified any property of the estate which is of inconsequential value at this time. Further, the Debtor has not identified any property, the abandonment of which would be in violation of state statutes or regulations reasonably designed to protect the public health or safety.

**G. Control of Books and Records; Privileges**

The Liquidating Trustee shall have complete and exclusive access and control on and after the Effective Date to all books, records and office space (as needed by the Liquidating Trustee, subject to availability and consent of the owners of the property in which such office space is located) of the Debtor. The Debtor shall immediately surrender all such books, records and office space (to the extent necessary) to the Liquidating Trustee on the Effective Date. From and after the Effective Date, any of the Debtor's management personnel, brokers, appraisers, and other professionals shall, upon request of the Liquidating Trustee, surrender any of the Debtor's books and records to the Liquidating Trustee. The Liquidating Trustee shall also succeed to the rights of any and all privileges and confidential information of the Debtor, including, but not limited to, the attorney-client privilege of the Debtor. The Liquidating Trustee shall be the sole person with the authority to waive or assert the attorney-client privilege of the Debtor after the Effective Date.

**H. Dissolution of Debtors; Tax Returns**

As soon following the Effective Date as practicable, on behalf of the Debtors, the Liquidating Trustee shall (i) file such Debtor's articles or certificate of dissolution and such other documents as are necessary to effect or complete its dissolution under the applicable laws of the state of Mississippi, and (ii) file any required (of the Liquidating Trust) final federal, state and local tax returns, and take such other action as shall be necessary or appropriate to effect a final determination of any amounts of federal, state or local taxes owed by the Debtor. The Liquidating Trustee shall be responsible for filing all tax returns, if any, of the Liquidating Trust.

## **I. Post-Appointment Requirements**

### **1. Compensation**

Heather Williams (and any professionals or others she may engage or employ) will be compensated as a professional, subject to Court approval of her engagement, and reimbursed for her reasonable out-of-pocket expenses.

### **2. Advisors**

The Liquidating Trustee may consult with attorneys, accountants, agents, appraisers and other professionals, and the opinions of the same shall be full protection and justification to the Liquidating Trustee, for anything done or admitted or suffered to be done in accordance with said opinions. Post-confirmation fees and expenses of such professionals engaged by the Liquidating Trustee, and compensation to the Liquidating Trustee herself, shall be charged as expenses of the Liquidating Trust.

### **3. Dissolution**

When all payments provided for in the Plan have been made to the creditors and all other obligations under this agreement fulfilled, the duties, powers and responsibilities of the Liquidating Trustee, her agents, attorneys and accountants shall terminate forthwith and the Liquidating Trust shall dissolve.

### **4. Reports**

The Liquidating Trustee may circulate information and reports that, in her sole discretion, are deemed advisable in order to fully inform the holders of claims in Classes 1 - 11 concerning the operations of the Liquidating Trust and all matters relating to the effectuation of the Plan.

**J. Covenants of the Liquidating Trustee**

**1. Negative Covenants**

During the term of the Plan, the Liquidating Trustee shall not take any action contrary to the Plan.

**2. Positive Covenants**

During the term of the Plan, the Liquidating Trustee shall:

- (a) Distribute to creditors and parties-in-interest such financial data and financial statements as creditors and parties-in-interest may reasonably request;
- (b) Furnish notice of proposed distributions; and
- (c) Permit reasonable access by creditors and parties-in-interest or any person designated by creditors and parties-in-interest to all records maintained by the Liquidating Trustee during business hours.

**K. Liquidating Trust and Trustee Provisions**

**1. Liquidating Trustee's Powers**

The Liquidating Trustee shall serve without bond. The Liquidating Trustee may not engage in any trade or business except to the extent reasonably necessary to, and consistent with, its liquidating purpose. Without limiting the generality of the foregoing, the Liquidating Trustee shall have full power and authority, without further notice or Bankruptcy Court approval, to:

- (a) Perfect and secure the Liquidating Trust's rights, title and interest to the properties comprising the Liquidating Trust estate;
- (b) Reduce all property in her possession to cash and hold the same;
- (c) Sell and convert the properties of the Liquidating Trust to cash, on terms and conditions the Liquidating Trustee deems advisable, and distribute the net proceeds pursuant to the Plan;
- (d) Contract to sell and sell the Liquidating Trust estate or any part or parts thereof for such purchase price and for cash or on such terms as the Liquidating Trustee shall deem appropriate;

- (e) Pay and discharge any costs, expenses or obligations deemed necessary to preserve the Liquidating Trust's estate or any part thereof or to preserve this Liquidating Trust;
- (f) Purchase insurance of all kinds sufficient to protect fully the Liquidating Trust's property or any part or parts thereof and to protect from liability;
- (g) Deposit Liquidating Trust funds;
- (h) Draw checks and make disbursements;
- (i) Employ and have such attorneys, accountants, appraisers and any other professionals as are necessary in the administration of the Liquidating Trust and to compensate the same from the Liquidating Trust estate, which professionals may be the professionals retained by the Debtor; such expenses shall be paid without notice, Bankruptcy Court approval or order;
- (j) Take any action necessary to protect the Liquidating Trust estate;
- (k) Enter into contracts and execute negotiable and non-negotiable obligations;
- (l) Sue third parties to recover assets of the Liquidating Trust;
- (m) Appoint, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable;
- (n) When and if advisable, object to claims or seek their subordination;
- (o) Litigate claims and causes of action, including tort claims and insurance claims;
- (p) Perform the Debtor's obligations under insurance policies, including without limitation, providing notice to insurers, cooperating with insurers, and involving insurers in defense and settlement decision-making, all as set forth in the applicable insurance policies;
- (q) Compromise controversies;
- (r) Establish a reserve for the payment of future expenses;
- (s) Withhold employment and income, or other taxes as is appropriate;
- (t) When, in her sole discretion, the Liquidating Trustee determines that it is practicable and appropriate, the Liquidating Trustee shall seek an order

administratively closing the Case, and a final decree from the Bankruptcy Court closing the Chapter 11 Case; and

- (u) Take such other actions, as may be necessary or helpful to consummate the Plan.

## **2. Management of Liquidating Trust's Estate**

The Liquidating Trustee shall invest all funds received into the Liquidating Trust in the same manner as Chapter 7 trustees are required to invest funds pursuant to the guidelines of the United States Trustee, provided that the Liquidating Trustee shall invest funds held in only demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid and low-risk investments, such as Treasury bills.

## **3. Maintenance of Records**

The Liquidating Trustee shall keep or cause to be kept books and records containing a description of all property from time to time constituting the Liquidating Trust estate, and an accounting of all receipts and disbursements in respect of the Liquidating Trust and its assets.

## **4. Liquidating Trust Expenses**

All costs, expenses and obligations incurred by the Liquidating Trustee in administering the Liquidating Trust or in any manner connected, incidental or related thereto shall be a charge against the trust assets remaining from time to time in the hands of the Liquidating Trustee. Such expenses shall be paid as they are incurred without the need for Bankruptcy Court approval.

## **5. Liquidating Trustee Compensation**

The Liquidating Trustee shall be compensated for her services at an hourly rate to be approved by the Court and to be reimbursed for reasonable out-of-pocket expenses.



**6. Limitation on Liquidating Trustee's Liability**

The Liquidating Trustee shall not be liable for any act or omission as Liquidating Trustee hereunder acting in good faith in the exercise of her best judgment. However, the Liquidating Trustee shall be liable in any event for her own fraud, willful misconduct or gross negligence.

**7. Duration of Liquidating Trust**

The Liquidating Trust shall become effective upon the Effective Date. Thereupon these Liquidating Trust provisions and the Liquidating Trust shall remain and continue in full force and effect until the Liquidating Trust's estate has been wholly converted to cash or abandoned and all costs, expenses and obligations incurred in administering this Liquidating Trust have been fully paid and all remaining income, proceeds and avails of the Liquidating Trust's estate have been distributed in payment of Allowed Claims pursuant to the provisions of the Plan. The Liquidating Trustee will make continuing efforts to dispose of the trust assets, make timely distributions and not unduly prolong the duration of the Liquidating Trust. The Liquidating Trust shall in no event remain in existence for longer than five (5) years, provided, however, that upon approval of the Bankruptcy Court or some other court of competent jurisdiction upon a finding that an extension(s) of such term is necessary to the liquidating purpose of the Liquidating Trust, the term of the Liquidating Trust may be extended for a finite term based on the particular facts and circumstances; each further extension must be approved by the Bankruptcy Court or some other court of competent jurisdiction within six (6) months of the beginning of the extended term. Upon the occurrence of the termination of the Liquidating Trust, the Liquidating Trustee shall file with the Bankruptcy Court a report thereof, seeking an order discharging the Liquidating Trustee and providing such injunctive relief required with respect to claims which are discharged, and provide notice thereof to all creditors whose claims were not paid in full pursuant to the Plan.

It is anticipated that the Liquidating Trustee will assume the responsibility for the litigation(s) presently pending upon the Effective Date of the Plan. Similarly, the Debtor expects the Liquidating Trustee to complete the analysis of claims and the claim objection process which has already commenced. Because the Debtor is not certain when the termination of the Liquidating Trust will occur, the Debtor cannot estimate with any degree of certainty the fees and costs to be incurred by the Liquidating Trustee. The Debtor believes that the costs incurred by the Liquidating Trustee would be less than if a trustee were appointed or if this proceeding was converted to a Chapter 7 case.

**M. Provisions Governing Distributions**

**1. Exculpation and Immunity Regarding Distributions**

The Liquidating Trustee and her representatives, agents and professionals, from and after the Effective Date, are hereby exculpated by all persons, holders of claims and interests, entities and parties-in-interest receiving distributions under the Plan from any and all claims, causes of action and other assertions of liability arising out of the Liquidating Trustee's discharge of the powers and duties conferred upon her by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan or applicable law, except solely for actions or omissions arising out of fraud, willful misconduct or gross negligence. No current holder of a claim or interest, and no representative thereof, shall have or pursue any claim or cause of action (a) against the Liquidating Trustee for making payments or taking any action in accordance with the Plan or for implementing the provisions of the Plan or (b) against any holder of a claim for receiving or retaining payments or other distributions as provided for by the Plan.

**N. Indemnification; Limitations**

The Liquidating Trust will protect, hold harmless and indemnify the Liquidating Trustee from and against any and all claims, injury, damage, costs, charges and expenses, including reasonable attorneys' fees, which the indemnified parties may suffer or pay, for or on account of, or by reason of their lawful acts on behalf of the Liquidating Trust or resulting from their services for the acts on behalf of the Liquidating Trust or resulting from their services for the Liquidating Trust, except any and all claims, obligations, rights, suits, damages, causes of action, remedies, and liabilities based on conduct that constitute fraud, gross negligence or reckless, willful, or wanton misconduct.

Except as provided in the Plan, no recourse shall ever be had, directly or indirectly, against the Liquidating Trustee, or against any agent, attorney, accountant or other professional for the Liquidating Trustee, by legal or equitable proceedings, or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trustee under the Plan, or by reason of the creation of any indebtedness by the Liquidating Trustee under the Plan for any purpose authorized by the Plan, it being expressly understood and agreed that all such liabilities, covenants and agreements shall be enforceable only against and be satisfied only out of the trust assets or such part thereof as shall under the terms of any such agreement be liable therefor or shall be evidence only of a right of payment out of the trust assets.

## **ARTICLE VIII**

### **THE EFFECT OF THE PLAN**

#### **A. Vesting**

On the Effective Date, all property and assets of the Debtor and the Debtor's estate that constitute trust assets as of the Effective Date, specifically including all of the Debtor's claims and causes of action retained pursuant to § 1123(b)(3)(B) of the Bankruptcy Code, shall, without further act or action on the part of any party be deemed: (a) to be merged with and into the pool of property and assets constituting the trust assets; and (b) to be transferred to and vested in the Liquidating Trust free and clear of all liens, encumbrances, claims and interests, except for those claims and interests specifically provided for under the Plan or the Confirmation Order.

#### **B. Discharge**

This is a liquidating plan under Chapter 11 and the Debtor does not get a discharge as a result.

#### **C. Governing Authority**

Except to the extent that the Bankruptcy Code or Federal Rules of Bankruptcy Procedure are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced with the laws of the State of Mississippi, without giving effect to any conflicts of law principles.

## **ARTICLE IX**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Unless expressly assumed or rejected, all remaining executory contracts and unexpired leases shall be deemed rejected as of the Effective Date. Claims, if any, arising from the rejection of executory contracts or unexpired leases shall be filed with the Bankruptcy Court and served upon

the Proponents on or before the date set forth in the Order Approving the Disclosure Statement or such claims will be released and forever barred.

## **ARTICLE X**

### **PLAN ALTERNATIVES**

#### **A. Liquidation**

If the Plan cannot be confirmed under Section 1129(a) or (b) of the Bankruptcy Code, the Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code, in which case a trustee would be appointed to liquidate any remaining Assets of the Debtor for distribution to creditors pursuant to Chapter 7 of the Bankruptcy Code. The Debtor believes that in the event a conversion occurred, all creditors would likely receive distributions of a lesser value on their Allowed Claims, and would have to wait longer to receive such distribution than they would under the terms of this Plan. Further, conversion to Chapter 7 would significantly increase the administrative costs of the Debtor's estate which would further delay and diminish the distributions to creditors. A liquidation analysis in this particular case is unnecessary because the Debtor is liquidating.

#### **B. Alternative Plans**

If the Plan is not confirmed, the Debtor, or any other party-in-interest could attempt to formulate an alternative plan. The Debtor believes that if the Plan is not confirmed, there is a substantial likelihood that any alternative plan proposed may provide for lesser distributions to creditors and will involve additional administrative costs in connection with its formulation. Further, any attempt to formulate an alternative plan will delay the creditors' receipt of distributions. Therefore, the Debtor believes that the Plan will enable creditors to realize the greatest possible recovery on their claims with the least delay.

## **ARTICLE XI**

### **LIQUIDATION ANALYSIS AND FEASIBILITY**

#### **A. Feasibility of the Plan**

In large part, the liquidation analysis that would actually be performed in a case such as this has already been performed as a result of the asset sales that have occurred. Further, feasibility is not actually an issue at this stage of the case because what remains to be done is prosecute claims and causes of action so that they are monetized, and then the existing cash and the monetized receipts from the claims and causes of action will be disbursed to creditors, after claims objections have occurred. Accordingly, the Plan is imminently feasible and depends, as to the timing and amount of distributions, only upon the success of the Liquidating Trustee in monetizing claims and causes of action.

Simply stated, the Debtor's assets will be transferred to the Liquidating Trust. The Liquidating Trustee will collect assets, liquidate claims and disburse the remainder of the funds in the order of their legal priority.

#### **B. Liquidation Analysis**

The Debtor is liquidating. As a result, a liquidation analysis is not necessary.

## **ARTICLE XII**

### **TAX CONSEQUENCES**

#### **A. General**

Under the Internal Revenue Code of 1986, as amended (the "Tax Code") and regulations promulgated thereunder (the "Regulations"), there are certain significant federal income tax consequences associated with the Plan. Certain of these consequences are discussed below. The tax consequences described below are subject to significant uncertainties because of (i) the complexity

of the transactions contemplated by the Plan; (ii) the uncertainty as to the tax consequences of events in prior years, including changes made by the Bankruptcy Tax Act of 1980 ("BTA80"), the Tax Reform Act of 1985 ("TRA85"), the Tax Reform Act of 1986 ("TRA86"), the Omnibus Reconciliation Act of 1987 ("ORA87"), the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA"), the Omnibus Budget Reconciliation Act of 1989 ("OBRA89"), the Revenue Reconciliation Act of 1990 ("RRA90") and the Revenue Reconciliation Act of 1993 ("RRA93"); (iii) the differences in the nature of the claims of various claimants, their taxpayer status, residence and methods of accounting (including claimants within the same class), (iv) prior actions taken by claimants with respect to their claims; and (v) the possibility that events or legislation subsequent to the date hereof could change the federal tax consequences of the transactions. There may also be state, local or foreign tax issues that may affect particular claimants.

HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR TAX ADVISORS RESPECTING THE INDIVIDUAL TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED UNDER OR IN CONNECTION WITH THE PLAN, INCLUDING STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.

**B. Tax Consequences to Claimants**

The tax consequences of the implementation of the Plan to a claimant will depend in part on (i) whether the claimant's claim constitutes a security for federal income tax purposes, (ii) whether the claimant reports income on the accrual basis, (iii) whether the claimant receives consideration in more than one tax year, (iv) whether the claimant is a resident of the United States, and (v) whether all the consideration received by the claimant is deemed to be received by that claimant as part of an integrated transaction. The federal tax consequences upon the receipt of cash and notes allocable to interest are discussed below.

**C. Gain or Loss on Exchange**

The Debtor does not believe that any of the creditors' claims will constitute tax securities. Whether a debt instrument constitutes a security is based on the facts and circumstances surrounding the origin and nature of the debt and its maturity date. Generally, claims arising out of the extension of trade credit have been held not to be securities. Instruments with a five-year term or less also rarely constitute securities. Accordingly, a claimant will recognize gain or loss on the exchange of his existing claim (other than a claim for accrued interest) for any consideration. The amount of such gain or loss will equal the difference between (i) the "amount realized" in respect of such claim and (ii) the adjusted tax basis of the claimant in such claim. Pursuant to Section 1001 of the Tax Code, the "amount realized" will be equal to the sum of the cash plus the fair market value of any other property received in such exchange.

1. **Receipt of Cash.** A claimant who receives cash in full satisfaction of his claim will be required to recognize gain or loss on the exchange. The claimant will recognize gain or loss equal to the difference between the "amount realized" in respect of such claim and the adjusted tax basis of the claimant in the claim, and the tax treatment of the exchange will parallel the tax treatment set forth under above.
2. **Determination of Character of Gain or Loss.** In the case of a claimant whose existing claim does not constitute a capital asset, the gain or loss realized on the exchange will give rise to ordinary income or loss. In the case of a claimant whose existing claim constitutes a capital asset in his hands, the gain or loss required to be recognized will generally be classified as a capital gain or loss, except to the extent of interest. Any capital gain or loss recognized by a claimant will be long-term capital gain or loss with respect to those claims for which the holding period of the



claimant is more than twelve (12) months, and short-term capital gain or loss with respect to such claims for which the holding period of the claimant is twelve (12) months or less.

3. **Receipt of Interest.** The BTA80 reversed prior law by providing that consideration attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the claimant's existing claims are capital assets in his hands and the exchange is pursuant to a tax reorganization. A claimant who, under his accounting method, was not previously required to include in income accrued but unpaid interest attributable to his existing claims, and who exchanges his interest claim for cash, other property or Stock, or a combination thereof, pursuant to the Plan will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that claimant realizes an overall gain or loss as a result of the exchange of his existing claims.

**D. Backup Withholding**

Under the Tax Code, interest, dividends and other "reportable payments" may, under certain circumstances, be subject to "backup withholding" at a thirty-one percent (31%) rate. Withholding generally applies if the holder: (i) fails to furnish his social security number or other taxpayer identification number ("TIN"), (ii) furnishes an incorrect TIN, (iii) fails to report interest or dividends, or (iv) under certain circumstances fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding.

**BECAUSE THE FINAL OUTCOME DEPENDS SO MUCH ON EACH INDIVIDUAL CLAIMANT'S SITUATION, IT IS IMPERATIVE THAT EACH CLAIMANT SEEK INDIVIDUAL TAX COUNSEL FOR ADVICE ON HIS PARTICULAR SITUATION.**

**ARTICLE XIII**

**INVALIDATION OF LIENS**

All liens securing claims which are not Allowed pursuant to the provisions of the Plan or Bankruptcy Code Sections 502 and 506 shall be invalidated and deemed null and void and of no further force and effect. The provisions of the confirmed Plan shall bind all creditors and parties-in-interest, whether or not they accept the Plan and shall discharge the Debtor from all claims that arose prior to Confirmation. The distributions provided under the Plan shall be in exchange for and in complete satisfaction of all claims and interests regarding any of the Debtor's assets or properties, including claims arising after the date of filing of the Petition and prior to Confirmation. Unless otherwise specifically provided to the contrary herein or in the Confirmation Order, on or after Confirmation, all holders of claims or interests shall be precluded from asserting any claim against the Debtor or its assets or properties.

The Debtor may close this Chapter 11 case prior to creditor distributions.

**ARTICLE XIV**

**UNITED STATES TRUSTEE'S REPORTS & FEES**

The Debtor's proposed Plan, pursuant to 28 U.S.C. § 1930(a)(6), provides payment to the United States Trustee of the appropriate sums required for all disbursements made by the Debtor during the Chapter 11 proceeding. In addition, the proposed Plan provides that the Debtor will make payments to the United States Trustee of the appropriate sums required for all disbursements made by the Debtor pursuant to the terms of the proposed Plan, including the payment of post-confirmation

quarterly fees as required by 11 U.S.C. § 1129(a)(12) until such time as this case is converted, dismissed or closed by the Court. Additionally, the Debtor shall submit to the U.S. Trustee post-confirmation monthly operating reports in the format prescribed by the U.S. Trustee until such time as this case is converted, dismissed or closed by the Court.

## **ARTICLE XV**

### **RETENTION OF JURISDICTION**

Subsequent to Confirmation of the Plan (including after the Chapter 11 Case has been closed), the Court shall have jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan for, inter alia, the following purposes:

1. To determine any and all proceedings involving the allowance, estimation, classification, priority, payment or subordination of claims or interests;
2. To determine and all applications or motion for allowances of compensation and reimbursement of necessary expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code;
3. To determine any and all applications or motions pending on the Effective Date for the rejection or assumption of executory contracts or unexpired leases or for the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which the Debtor is a party or which the Debtor may be liable, and to hear and determine, and if need be, liquidate, any and all claims arising therefrom including the determination of defaults required to be cured;
4. To determine any and all applications, adversary proceedings and contested or litigated matters initiated or asserted by the Debtor on or prior to the Effective Date and initiated or asserted by the Liquidating Trustee subsequent to the Effective Date

and arising under Chapter 11 of the Bankruptcy Code or arising in or related to the Debtor's Chapter 11 Case, including but not limited to, (i) causes of action and other claims to avoid or recover transfers of the Debtor's property, including, but not limited to, all avoidance actions under Chapter 5 of the Bankruptcy Code and actions pursuant to applicable state law, (ii) all claims and causes of action arising from pre-petition activities of the Debtor, whether arising by statute or common law, whether arising under the laws of the United States, Mississippi or any other state having jurisdiction over any claim or controversy, and whether maintainable against third parties, affiliates or insiders of the Debtor, and (iii) claims, causes of action and other litigation that may adversely impact or affect the Liquidating Trust's property;

5. To issue orders, determinations and rulings regarding the valuation, recovery, disposition, distribution, operation or use of the Debtor's property, including claims to recover preferences, fraudulent conveyances or damages of any type from any person and whether initiated before or after the Effective Date;
6. To consider any modifications to the Plan, remedy any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
7. To determine all controversies, suits and disputes that may arise in connection with the interpretation, enforcement, implementation or consummation of the Plan or any person's obligation and responsibilities thereunder;
8. To consider and act on the compromise and settlement of any claim against or claim or cause of action by or against the Debtor or the Liquidating Trust;

9. To issue such orders in aid of execution of the Plan to the extent authorized by 11 U.S.C. § 1142;
10. To enter a final decree closing the Debtor's Chapter 11 Case;
11. To recover all assets of the Debtor, wherever located;
12. To determine matters concerning state, local and federal taxes in accordance with §§ 346, 546 and 1146 of the Bankruptcy Code; and
13. To determine all matters (including regulatory matters) relating to the Liquidating Trust.

#### **ARTICLE XVI**

#### **MODIFICATION OF THE PLAN**

The Debtor may amend or modify the Plan at any time prior to the entry of an order confirming the Plan without the approval of the Court. Subsequent to the entry of the order confirming the Plan, the proponent may modify the Plan before substantial consummation of the Plan with the approval of the Court.

#### **ARTICLE XVII**

#### **WITHDRAWAL OF THE PLAN**

The Debtor reserves the right to revoke and withdraw the Plan as the plan of liquidation for the Chapter 11 case, at any time prior to the Confirmation Date if conditions set forth in the Plan cannot be satisfied for any reason after the Confirmation Date, at any time up to the Effective Date. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void.

## **ARTICLE XVIII**

### **SOLICITATION OF ACCEPTANCES FOR THE PLAN**

Although this Disclosure Statement provides information regarding the assets, liabilities and general financial posture of the Debtor and the potential benefits that might accrue to holders of claims and interests in the Debtor upon confirmation of the Plan, the Disclosure Statement neither guarantees nor purports to represent the amount or percentage of each Allowed Claim that would be realized under the Plan. Despite this uncertainty, which is inherent in any plan, the Debtor believes that the Plan will provide each holder of a claim with an opportunity to receive greater benefits than any other alternative.

As explained more fully above, before the Plan may be confirmed by the Court, the Court must find that the criteria set forth in the Bankruptcy Code have been met, including the requirement that the Plan must be accepted by an impaired class.

## **ARTICLE XIX**

### **CONCLUSION**

Based on the information currently available, the Debtor believes that confirmation of the Plan is in the best interest of all creditors. The Plan provides for an organized, orderly liquidation of the Debtor's assets and an equitable distribution of the proceeds from the monetization of its assets to creditors. Any alternative would result in significant delays and increased expenses which would minimize the amount of distribution to creditors. Therefore, the Debtor urges you to vote to accept the Plan.

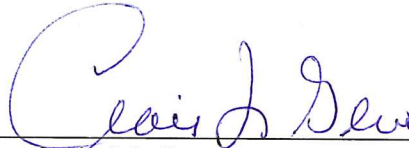
THIS, the 15<sup>th</sup> day of August, 2022.

Respectfully submitted,

EXPRESS GRAIN TERMINALS, LLC

By Its Attorneys,

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Craig M. Geno

OF COUNSEL:

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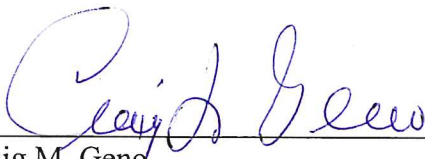
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### CERTIFICATE OF SERVICE

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via electronic filing transmission, a true and correct copy of the above and foregoing to the following:

Abigail M. Marbury, Esq.  
[abigail.m.marbury@usdoj.gov](mailto:abigail.m.marbury@usdoj.gov)

THIS, the 15<sup>th</sup> day of August, 2022.

  
Craig M. Geno