

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:

Case No. 14-29027-EPK

TRIGEANT HOLDINGS, LTD., et al.,¹

Chapter 11
(Jointly Administered)

Debtors.

**STIPULATION RESOLVING PLAN CONFIRMATION ISSUES
WITH UNION PACIFIC RAILROAD COMPANY**

This Stipulation (the “Stipulation”) is made as of the date indicated below, by and between the above-captioned debtors, Trigeant Holdings, Ltd., et al.,² (the “Debtors”), Gravity Midstream Corpus Christi, LLC (the “Buyer”) and Union Pacific Railroad Company (“Union Pacific”) and together with the Debtors and the Buyer, the “Parties”), through their undersigned counsel, and resolves an unfiled objection to confirmation of the Debtors' Chapter 11 plan in this case.

RECITALS

WHEREAS, on August 25, 2014, Trigeant Holdings, Ltd. and Trigeant, LLC filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code.

WHEREAS, on September 16, 2014, Trigeant Ltd. filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

WHEREAS, the three bankruptcy proceedings are jointly administered under Case Number 14-29027-EPK (the “Bankruptcy Case”);

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Trigeant Holdings, Ltd. (5375); Trigeant, LLC (2035); and Trigeant, Ltd. (2037). The Debtors’ business address is 3020 North Military Trail, Suite 100, Boca Raton, Florida 33431.

² See Note 1 above.

WHEREAS, on September 16, 2014, the Debtors filed their initial Chapter 11 plan in the Bankruptcy Case, which proposed a sale of various of the Debtors' assets to Buyer pursuant to an attached Asset Purchase Agreement (the "Sale");

WHEREAS, the Chapter 11 plan and Asset Purchase Agreement were subsequently amended (as amended, respectively, the "Plan" and the "APA");

WHEREAS, Section 9.3(a) of the Plan provides that certain executory contracts and leases are to be assumed by Debtors and assigned to Buyer;

WHEREAS, Section 7.2(e)(ii) of the APA provides in summary that each of the "RR Contracts," set forth in Schedule 3.6(a) of the APA, shall either be assumed by Debtors and assigned to the Buyer, or each of the "RR Contracts" shall have been replaced at closing by new agreements that are not materially less beneficial to the Buyer than the 3.6(a) scheduled "RR Contracts";

WHEREAS, Schedule 1.1(a)(ii) of the APA, entitled "Assumed Executory Leases and the Acquired Real Property," Schedule 1.1(a)(v) of the APA, entitled "Assigned Contracts," and Schedule 3.6(a) of the APA, entitled "Third Party Consents" each reference contracts under which Union Pacific and/or its predecessors are parties, labeling them the "RR Contracts" (all such contracts, the "Union Pacific Contracts");

WHEREAS, Union Pacific asserts that certain of the Union Pacific Contracts cannot be assumed and assigned because they were either terminated, in the name of an entity other than the Debtors, were never executed, or are not executory contracts (together, the "Assumption Issues");

WHEREAS, partially in order to resolve the Assumption Issues, Debtors filed a Supplement to the Plan (ECF No. 539) which includes an Exhibit A (the “Updated Schedule”) that set forth the Union Pacific Contracts that are to be assumed and assigned to Buyer;

WHEREAS, Union Pacific asserts that because two of the Union Pacific Contracts set forth in the Updated Schedule, such contracts being identified hereto in **Exhibit A**, were terminated several years ago (the “Terminated Trigeant Contracts”), such contracts are neither assumable nor assignable (the “Termination Issues”);

WHEREAS, Debtors in their Initial Pre-Confirmation Brief on Ownership of the Bay/Berry Agreements and Material Railroad Contracts (the “Pre-Confirmation Brief”) (ECF No. 447) characterized certain of the “Material RR Contracts.”

WHEREAS, Union Pacific disagrees with (1) the characterization of certain of the Union Pacific Contracts as easements and/or real property interests in various of Debtors’ pleadings in this case; and (2) the characterization of one particular Union Pacific Contract referenced in the Updated Schedule as an executory contract or lease (the “Easement”), such Easement being identified hereto in **Exhibit B**, as it is actually an easement and not an executory contract or lease (both issues of disagreement together the “Characterization Issues”);

WHEREAS, the Parties wish to resolve the Termination Issues and the Characterization Issues without the need for litigation through an objection to the confirmation of the Plan;

WHEREAS, the Parties have negotiated a consensual resolution of the Termination Issues and the Characterization Issues as set forth below in this Stipulation.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged by each of the Parties hereto, the Parties hereby stipulate and agree as follows:

1. The foregoing recitals are incorporated herein by reference as if fully set forth herein.

2. This Stipulation shall not be deemed an admission of liability or fault by or against any of the Parties.

3. This Stipulation shall not alter, modify or otherwise affect in any way the Debtors' obligations under the APA.

4. Union Pacific consents to Debtors' conveyance to Gravity of all the Union Pacific Contracts contained in the Updated Schedule, excluding the Terminated Trigeant Contracts, either by Debtors' assumption and assignment to Gravity, or by other conveyance, provided that such conveyance complies with the requirements of the Bankruptcy Code. Union Pacific acknowledges and agrees that no cure payments are payable in connection with the assumption and assignment of such contracts to Gravity.

5. All Parties agree that the Terminated Trigeant Contracts will not be assumed and/or assumed and assigned by Debtors as they have been terminated.

6. Buyer and Union Pacific agree to negotiate, in good faith, to obtain replacement contracts (the "Replacement Contracts") as to the subject matter of the Terminated Trigeant Contracts substantially in the form of Union Pacific's standard form track agreements.

7. Debtors agree to amend the Plan, file a Plan Supplement, or seek terms in the Plan Confirmation Order to implement the terms of this Stipulation, as necessary.

8. All Parties agree that the Easement is not an executory contract or a lease, but rather an easement and a real property interest, and therefore it cannot be assumed and/or

assumed and assigned as an executory contract or lease. Union Pacific consents to the transfer of the Debtors' interests in the Easement, if any, to Buyer.

9. All Parties agree that nothing in the Plan or any other pleading in this Bankruptcy Case shall have any relevance to, impact on, or precedential value on Union Pacific or Buyer and their successors and assigns with respect to characterizing the nature of any of the Union Pacific Contracts, including without limitation whether such contracts are easements or other real property interests.

10. The Parties further agree that nothing in the Plan shall alter the Parties' rights under any Union Pacific Contract, other than as permitted by this Stipulation and the United States Bankruptcy Code.

11. This Stipulation shall be binding upon the Parties and their predecessors, successors and assigns.

12. This Stipulation may be executed by facsimile or electronic signature (in PDF format) and in counterparts, each of which (upon execution of a counterpart by each of the Parties), individually or taken together, shall constitute a single integrated agreement, and shall be treated as an original for all purposes.

13. This Stipulation constitutes the entire written agreement between the Parties as to the Termination Issues and the Characterization Issues, and there are no other agreements modifying its terms. The terms of this Stipulation can only be modified by a writing signed by each of the Parties hereto, expressly stating that such modification is intended.

14. The Parties and their attorneys have reviewed and participated in the drafting of this Stipulation, such that this Stipulation shall be construed as having been equally written by all Parties.

15. Each of the Parties shall bear its own costs and attorneys' fees incurred in connection with all matters settled herein, and shall not seek reimbursement or compensation from the other Party in connection with same, except as it relates to a breach of this Stipulation.

16. In the event that any one or more of the provisions of this Stipulation is held void, voidable, invalid, illegal, or unenforceable for any reason, then said provision shall be deemed to be severed and removed from this Stipulation and the remainder of this Stipulation shall remain in full force and effect as if said provision had never been contained herein.

IN WITNESS WHEREOF, the Parties have executed this Stipulation effective as of this 29th day of April, 2015.

Dated: April 29, 2015

Filed and Agreed to By:

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*Attorneys for Union
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the Service List below, either via transmission of Notices of Electronic Filing generated by CM/ECF or by first class U.S. mail, postage prepaid, for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Mark D. Bloom

Mark D. Bloom

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EXHIBIT A

| Party to Agreement | Folder No. | Audit No. | Date | Description |
|----------------------------|-------------------|------------------|-------------|--|
| Union Pacific Railroad Co. | 2049-46 | | 10-Dec-01 | Track Lease Agreement covering 4,592 Feet of ICC Track No. 50-104 (Circ7: CC150, Yard 13, Track 120) and 1,244 feet of ICC Track No. 50-107 (Circ7: CC150, Yard 13, Track 791), as amended pursuant to that certain Joint Use Agreement and Supplement thereto, with Citgo |
| Union Pacific Railroad Co. | 2437-57 | | 2-April-07 | Industry Track Contract covering 1,272 feet of ICC Track No. 794 (Circ7: CC150, Yard 13, Track 794) |

EXHIBIT B

| Party to Agreement | Folder No. | Audit No. | Date | Description |
|---|-------------------|------------------|-------------|---|
| Union Pacific Railroad Co (as successor to Missouri Pacific Railroad Co.) | None | - | - | Easement for railroad purposes from Alice Dunn to Missouri Pacific Railroad Co, dated May 6, 1958, recorded in Volume 813, Page 513 |