

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

In re:	)	
	)	
TRANSPORT EXPRESS, LLC	)	Case No. 16-14166 EEB
EIN 20-5410431	)	Chapter 11
	)	
Debtor.	)	

---

**DISCLOSURE STATEMENT**

---

**I. INTRODUCTION**

Dated: February 13, 2017

On April 28, 2016, Transport Express, LLC (“Debtor”), filed its Voluntary Petition for reorganization pursuant to Chapter 11 of the Bankruptcy Code. On February \_\_\_\_, 2017, the Debtor filed its Plan of Reorganization (the “Plan”).

A. REORGANIZATION AND DISCLOSURE. Chapter 11 is the principal reorganizational Chapter of the Bankruptcy Code. Pursuant to Chapter 11, a Debtor may continue to operate its business to pay its creditors. Attempts to collect pre-petition claims from the Debtor and any attempts to foreclose upon the Debtor’s Assets are stayed during the pendency of the bankruptcy proceeding. This Disclosure Statement is intended to provide the holders of claims adequate information about the Debtor and its proposed Plan so that creditors can make an informed judgment about the merits of approving the Plan. The Plan, if confirmed by the Bankruptcy Court, will bind the Debtor and the Debtor’s creditors with respect to the terms and conditions set forth therein even if creditors do not vote in favor of the Plan.

B. Adequate information. “Adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor and the condition of the Debtor’s books and records, including a discussion of the potential material Federal tax consequences of the Plan to the Debtor, any successor to the Debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the Plan, but adequate information need not include such information about any other possible or proposed Plan. In determining whether the Plan provides adequate information, the Court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest and the cost of providing additional information.

An “investor typical of holders of claims or interests of the relevant class” means investors having a claim or interest of the relevant class; such a relationship with the Debtor as the holders of other claims or interests of such class generally have; and, such ability to obtain such information from sources other than the disclosure required by §1125 of the Bankruptcy Code (11 U.S.C. §1125) as holders of claims or interests in such class generally have.

C. YOU ARE ENCOURAGED TO READ THE PLAN AND TO CONSULT WITH YOUR COUNSEL ABOUT IT. CERTAIN CAPITALIZED TERMS USED HEREIN ARE DEFINED IN THE PLAN OR IN THE BANKRUPTCY CODE. THE PLAN HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, AND THE COMMISSION HAS NOT RENDERED AN OPINION UPON THE ACCURACY OR ADEQUACY OF ANY STATEMENTS CONTAINED IN THE PLAN.

APPROVAL OF THE DISCLOSURE STATEMENT BY THE COURT AS CONTAINING ADEQUATE INFORMATION DOES NOT IMPLY COURT APPROVAL OF THE PLAN. IN THE EVENT THE DEBTOR MODIFIES ITS PLAN BEFORE CONFIRMATION, THE PLAN AS MODIFIED SHALL BECOME THE PLAN FOR PURPOSES OF CONFIRMATION. AS SUCH, PREVIOUS VERSIONS OF THE PLAN SHOULD BE DISREGARDED BY CREDITORS.

D. VOTING ON THE PLAN. The Debtor is proposing a Plan as a means of continuing its business in order to pay its creditors from its ongoing business operations. A vote on the Plan is important. The Debtor can implement the Plan only if it is confirmed by the Bankruptcy Court. The Plan can be confirmed only if, among other things, it is accepted by the holders of two-thirds in amount and more than one-half in number of the claims which actually vote on the Plan. At least one "impaired class" must vote to accept the Plan. In the event the requisite acceptances are not obtained from the impaired classes, the Court may nevertheless confirm the Plan if the Court finds that it is fair and equitable to the class or classes rejecting the Plan. Under the Debtor's proposed Plan, Classes 1 through 4 are impaired and therefore are entitled to vote on the Plan. There are no non-impaired classes in the Debtor's Plan.

"Impaired" is defined by §1124 of the Bankruptcy Code. Impaired means that Debtor's Plan alters the legal, equitable or contractual rights to which such classes or interest entitles the holder of such claims or interest. The holders of impaired claims which are also allowed claims (as defined in Article I, ¶ 1.3 of the Plan), or the holders in those classes of disputed claims which the Bankruptcy Court has temporarily allowed for voting purposes only are entitled to vote on the Debtor's Plan.

You are not required to vote on the Plan, but only those votes actually received by Debtor's counsel on or before 5:00 p.m. MST/MDT on the date set forth in the Court's Order or Notice accompanying this Plan will be counted either for or against the Plan. You should either fax, mail or e-mail a completed ballot to the Debtor's counsel by 5:00 p.m. MST/MDT on the date established by the Court in its Order or Notice which accompanies this Plan. Please fill out your ballot completely to insure that your vote with respect to the Plan is properly counted. Ballots can be mailed, faxed or e-mailed to the Debtor's counsel at the following address, fax number, or e-mail address:

Weinman & Associates, P.C.  
730 17<sup>th</sup> Street, Suite 240  
Denver, CO 80202-3506  
Facsimile: (303) 572-1011  
[jweinman@epitrustee.com](mailto:jweinman@epitrustee.com)

Ballots will be counted as long as they are received by the Debtor's counsel by 5:00 p.m. MST/MDT on the date established by the Court in its Order or Notice accompanying this Plan.

The Court will hold a hearing on confirmation of the Plan and will, among other things, determine the result of the vote on the Plan. The Debtor will prepare a ballot report which it will present to the Court at the confirmation hearing. The date and time of the Court's hearing on confirmation and important deadlines are set forth in the Court's Order or Notice enclosed with this Disclosure Statement and the Plan.

E. Objecting to the adequacy of the information contained in the Disclosure Statement or to confirmation of the Plan. The Court will set a deadline for filing written objections to the adequacy of the information contained in the Disclosure Statement. If no objections are filed with the Court, the approval of the information contained in the Disclosure Statement

may become final. Any objection or request to modify the information contained in the Disclosure Statement will be considered by the Court at the hearing set by the Court on the adequacy of the Disclosure Statement.

In addition to voting on the Plan, creditors may also object to confirmation of the Plan by filing and serving written objections to confirmation of the Plan as required by the Bankruptcy Rules of Procedure and the Local Bankruptcy Rules of the Court. The Court has set a deadline for filing written objections in its Order or Notice which accompanies this Plan. If you wish to object to confirmation of the Debtor's Plan, you must file a written objection. Filing a ballot rejecting the Plan will not be considered an objection to confirmation of the Plan by the Court.

F. Bar Date. The Court set a deadline ("Bar Date") of August 16, 2016, by which creditors were to file Proofs of Claim in the Debtor's Chapter 11 bankruptcy proceeding. The Bar Date was previously mailed to you during the pendency of the Debtor's Chapter 11 bankruptcy proceeding. It may have been important that you filed a Proof of Claim with the Clerk of the Bankruptcy Court on or before the Bar Date or your claim may not be allowed and you may not be able to participate as a creditor in the Debtor's Chapter 11 bankruptcy proceeding. However, if you agree with the way the Debtor has listed your claim on its bankruptcy Schedules, and the claim is not listed as "disputed", "contingent" or "unliquidated", it is not necessary for you to file a Proof of Claim in order to have your claim allowed for purposes of voting on the Plan and receiving payment or other treatment of your claim under a confirmed Plan of Reorganization.

## **II. PRE-BANKRUPTCY HISTORY OF THE DEBTOR**

Russell Strobridge, Debtor's president and majority shareholder, started working part time for Mayflower moving in Arizona in 1977. This temporary employment aimed at earning some extra money while in school, turned into a 12 year full time job, at the end of which he returned to college. After graduation, Mr. Strobridge moved back to Colorado and he purchased a single truck in 1993 with which he began to move air freight. This was followed by the purchase of 6 additional trucks and the commencement of a separate flatbed truck fleet as well.

In 2006, Mr. Strobridge formed the Debtor to operate as a flatbed carrier while separately maintaining the cargo business related to air freight. However, in 2009 the air freight cargo business fell off dramatically and this business ceased and was dissolved. Nevertheless, Debtor grew and operated with great success with a fleet of between 10-18 trucks until late 2015. Mr. Strobridge attributes the pending election as the cause of a significant drop off in freight cartage for the industry generally and Debtor specifically. Indeed, In late 2015 and early 2016, business suddenly dropped precipitously and without warning. This eventually caused Debtor's cash flow to be insufficient to pay bills as they became due, even after Mr. Strobridge liquidated his retirement accounts to support the business.

Eventually, under threat of repossession of the Debtor's trucks, Mr. Strobridge determined that a Chapter 11 filing was a better option than liquidation.

Indeed, since the election, there has been a palpable up-tick in freight cartage and there is widespread optimism in the industry. In fact, Debtor's cash flow from operations

has been positive post-petition, and as can be seen from the projections which have been formulated in connection with this Disclosure Statement, there should be adequate revenue and positive cash flow to support Debtor's Plan.

### **III. EXPECTED POST-CONFIRMATION OPERATION OF REORGANIZED DEBTOR**

The Reorganized Debtor will operate its business following confirmation of its Plan and will pay its creditors with allowed claims pursuant to the provisions of the confirmed Plan from its ongoing business operations.

Upon confirmation of the Debtor's Plan, the Bankruptcy Estate's Assets will be transferred to the Reorganized Debtor. T. Russell Strobridge's 99% pre-petition membership interest in the Debtor will be retained by him. Juliana Duerr's 1% pre-petition membership interest in the Debtor will be retained by her. Their membership interests will be subject to the terms of the Plan. Mr. Strobridge will be the managing member and is not currently receiving a salary for managing the Reorganized Debtor's ongoing business operations. The Debtor is paying his health insurance. Ms. Duerr will be paid wages of \$15.00 per hour for her services relating to the business operations of the Reorganized Debtor.

### **IV. DESCRIPTION OF DEBTOR'S REAL AND PERSONAL PROPERTY ASSETS**

As of the date of the filing of the bankruptcy petition, the Debtor's Assets consist of personal property assets. The Debtor owns no real property.

The Debtor's personal property includes: cash, bank account(s), accounts receivable, security deposits, legal claims (if any), vehicles, furniture, fixtures and

equipment. A balance sheet showing the value of the Debtor's Assets at the time it filed its Chapter 11 case is attached hereto as Exhibit "A". A post-petition balance sheet is attached hereto as Exhibit "B".

**V. STATUS DURING CHAPTER 11 BANKRUPTCY PROCEEDING PENDING PRE-PETITION AND POST-PETITION LITIGATION AND PREFERENCE AND/OR FRAUDULENT CONVEYANCE CLAIMS**

A. STATUS DURING CHAPTER 11. The Debtor has been managing its financial affairs and operating its business under Chapter 11 as a Debtor-in-Possession since it filed for bankruptcy relief.

A representative of the Debtor attended an Initial Debtor Interview (IDI) conducted by the Office of the U.S. Trustee, and attended a §341 Meeting of Creditors.

The U.S. Trustee has not appointed a creditors' committee in this Chapter 11 bankruptcy proceeding.

B. PRE-PETITION LITIGATION. Prior to Debtor filing its bankruptcy petition, the Debtor was not involved in any legal proceedings.

C. POST-PETITION. Since the filing of its bankruptcy petition, the Debtor has been involved in the following litigation, contested and non-contested matters and hearings before the Bankruptcy Court:

1. The Debtor, through its representative, attended a Section 341 Meeting of Creditors.
2. The Debtor obtained authority to employ the law firm of Weinman & Associates, P.C. to represent it as bankruptcy counsel in the Chapter 11



proceeding, Dickensheet & Associates, Inc. as an appraiser to value its vehicles, and Accounting For Success as an accountant to prepare the Debtor's tax returns and for general accounting services.

3. The Debtor sought and obtained authority to use the cash collateral of Solera National Bank on a limited basis.
4. The Debtor sought and obtained authority to obtain post-petition financing from Benefactor Funding Corp. The Debtor is factoring its accounts receivable pursuant to the terms of a post-petition financing agreement.
5. BMO Harris Bank N.A. has filed a Motion for Relief From the Automatic Stay to allow it to foreclose on the Debtor's vehicles which secure the repayment of the debt owing to BMO Harris Bank N.A. The Debtor has filed an Objection to the Motion, requesting that the Court deny the Motion. The Debtor and BMO Harris Bank N.A. have reached an agreement which resolves the dispute over the Motion for Relief From Stay and provides adequate protection to BMO Harris Bank N.A. The Debtor will make monthly payments of \$5,073.05 commencing on February 15, 2017 and continuing until confirmation of the Debtor's Plan.
6. The Debtor has filed Monthly Operating Reports with the U.S. Bankruptcy Court for the District of Colorado and with the Office of the U.S. Trustee during the pendency of the within Chapter 11 case.

D. PREFERENCE AND/OR FRAUDULENT CONVEYANCE CLAIMS. The Debtor shall investigate preference and fraudulent conveyance claims and, if appropriate, shall commence appropriate legal proceedings to pursue such claims. In the event the Debtor

commences any such legal proceedings and receives an award of damages arising as a result of such legal proceedings, the Debtor will utilize such net proceeds to pay allowed Chapter 11 administrative expenses or allowed unsecured claims as may be appropriate under the Debtor's Plan. The Debtor knows of no such claims at the present time.

## **VI. EFFECTIVE DATE**

The "Effective Date" is defined in the Plan to mean that date which is sixty (60) days following confirmation of the Plan. The Debtor estimates that the Effective Date of its Plan will be April 24, 2017. The Effective Date of the Debtor's Plan may occur either sooner or later than the estimated date which will effect the date of certain payments and the occurrence of other events under the Debtor's Plan.

## **VII. CLASSIFICATION OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS AND IMPAIRMENT OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS**

### **A. CLASSIFICATION OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS AND IMPAIRMENT OF CREDITORS' CLAIMS AND EQUITABLE INTERESTS.**

(1) Classification. Pursuant to the requirements of 11 U.S.C. §1123 of the Bankruptcy Code, the Debtor has classified the claims of its creditors under its Plan. The Debtor has made this classification pursuant to the requirements of the Bankruptcy Code. Each class of claims which has been established under the Plan consists of claims which are substantially similar and with respect to each claim contained in each class, the Plan provides for the same treatment for each class or interest of each particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of its particular claim or interest.

(2) Impairment. As required pursuant to 11 U.S.C. §1123 of the Bankruptcy Code, the Debtor has identified in its Plan those classes of claimants which are impaired under the Plan.

B. CREDITOR CLAIMS AND EQUITABLE INTERESTS IN THE DEBTOR ARE CLASSIFIED AND IMPAIRED IN THE PLAN AS FOLLOWS:

(1) Class 1 consists of the allowed secured claim of BMO Harris Bank, NA, as evidenced by the following loans:

- (a) Loan No. 9768795001;
- (b) Loan No. 9828307001;
- (c) Loan No. 79443260010; and,
- (d) Loan No. 9819235001.

Class 1 is impaired under the Plan.

(2) Class 2 consists of the allowed unsecured deficiency claim of BMO Harris Bank, NA. Class 2 is impaired under the Plan.

(3) Class 3 consists of the holders of allowed unsecured claims other than the Class 2 creditor. Class 3 is impaired under the Plan.

(4) Class 4 consists of the holders of pre-petition equity interests in the Debtor. Class 4 is impaired under the Plan.

**VIII. TREATMENT OF CLASSES OF CREDITOR CLAIMS AND EQUITABLE INTERESTS UNDER THE DEBTOR'S PLAN**

Provision for payment or treatment of creditor classes and equitable interests under the Plan is set forth below.

(1) Class 1. BMO Harris Bank, NA. Class 1 is impaired under the Plan. Class 1 consists of the Allowed Secured Claim of BMO Harris Bank, NA as evidenced by the following loans:

- (a) Loan No. 9768795001;
- (b) Loan No. 9828307001;
- (c) Loan No. 79443260010; and,
- (d) Loan No. 9819235001.

The Allowed Secured Claim of the Class 1 creditor shall be allowed in the amount of \$315,000 and shall be paid by the Class 1 creditor retaining its liens recorded against the Debtor's Assets which secures its claim to the same extent and in the same priority as its pre-petition liens and receiving monthly payments of principal and interest. Interest shall be at the Market Rate of Interest of 5% per annum and shall be amortized over a period of 72 months commencing as of February 15, 2017. Each monthly payment of principal and interest shall be \$5,073.05. The first monthly payment of principal and interest of \$5,073.05 will be paid on February 15, 2017 and shall continue monthly thereafter on the first day of each month for an additional 47 months. Unless paid earlier, the Debtor shall pay the Class 1 creditor all remaining principal, interest or other amounts due under the secured claim of the Class 1 creditor on or before January 1, 2021. The terms of the Class 1 creditor's loan documents will continue to control except as expressly modified by the Plan. Upon payment in full, the liens of the Class 1 creditor shall be released and the Debtor shall own its Assets free and clear of the liens of the Class 1 creditor.

Nothing in this Plan is a waiver of any right of the Class 1 creditor against or a cure of any default by any guarantor under his or her guaranties of all the Class 1 creditor

financing transactions described in this Plan or the Debtor's Disclosure Statement. The Class 1 creditor expressly reserves all of its rights and remedies against the guarantors pursuant to their guaranties.

Payments to the Class 1 creditor shall be made payable to "BMO Harris Bank N.A." and delivered by U.S. mail to BMO Harris Bank N.A., P.O. Box 71951, Chicago, IL 60694-1951, or by other method acceptable to BMO Harris, so that they are received on or before the payment due dates.

The Class 1 creditor shall have an Allowed Unsecured Deficiency Claim in the amount of \$400,120.04. Such unsecured claim shall be impaired and shall be paid as provided for under Class 2 of the Plan. Under such circumstances, the Allowed Unsecured Deficiency Claim of the Class 1 creditor shall be included in Class 2 of the Plan and the Class 1 creditor shall also be entitled to vote for or against the confirmation of the Debtor's Plan as a member of Class 2 of the Plan.

(2) Class 2. Allowed Unsecured Deficiency Claim of BMO Harris Bank, NA. Class 2 is impaired under the Plan. Class 2 consists of the Allowed Unsecured Deficiency Claim of BMO Harris Bank, N.A. in the amount of \$400,120.04. The holder of the Allowed Unsecured Deficiency Claim in Class 2 shall be paid its Pro Rata share of 50% of Net Profit for ten (10) years commencing on the first anniversary of the Effective Date and continuing annually thereafter for nine (9) additional annual payments. Unless paid in full earlier, the Pro Rata amount shall be calculated by combining Class 2 and Class 3 claims. Payments to the member of Class 2 shall be in full and final satisfaction of the Allowed Unsecured Deficiency Claim of the Class 2 creditor.

Nothing in this Plan is a waiver of any rights of the Class 2 creditor against or a cure of any default by any guarantor under his or her guaranties of all the Class 2 creditor financing transactions described in this Plan or the Debtor's Disclosure Statement. The Class 2 creditor expressly reserves all of its rights and remedies against the guarantors pursuant to their guaranties.

Payments to the Class 2 creditor shall be made payable to "BMO Harris Bank N.A." and delivered by U.S. mail to BMO Harris Bank N.A., P.O. Box 71951, Chicago, IL 60694-1951, or by other method acceptable to BMO Harris, so that they are received on or before the payment due dates.

(3) Class 3. Allowed Unsecured Claims. Class 3 is impaired under the Plan. Class 3 consists of the holders of Allowed Unsecured Claims other than the Class 2 creditor's Allowed Unsecured Deficiency Claim. The holders of Allowed Unsecured Claims in Class 3 shall be paid 50% of their Pro Rata share of Net Profit plus interest for ten (10) years commencing on the first anniversary of the Effective Date and continuing annually thereafter for nine (9) additional annual payments unless paid in full earlier. Interest shall accrue at the Federal Judgment Interest Rate commencing as of the date of the Confirmation Order. The Pro Rata amount shall be calculated by combining Class 2 and Class 3 claims. Payments to the members of Class 3 shall be in full and final satisfaction of the Allowed Unsecured Claims of the Class 3 creditors.

The Class 3 creditors' state law rights, if any, against any member, affiliate or guarantor, etc. of the Debtor or other entity are unaffected by confirmation of the Debtor's Plan.

The Debtor estimates that allowed unsecured claims in Class 3 total approximately \$100,911. Allowed unsecured claims include: unsecured claims listed by the Debtor on its bankruptcy schedules and proofs of claim filed by the Debtor's creditors.

A detailed breakdown of Class 3 unsecured creditor claims is attached hereto as Exhibit "C".

The Debtor estimates that its Plan will pay 100% of each allowed unsecured claim plus interest over the ten (10) year period proposed in the Plan. Payment of these claims shall be in full and final satisfaction of Class 3 unsecured claims.

(4) Class 4. Equity Interests. Class 4 is impaired under the Plan. Class 4 consists of the pre-petition equitable interests in the Debtor. The pre-petition equitable interest in the Debtor shall be retained by the holders of such equitable interests following confirmation of the Plan. The equitable interests shall be subject to the provisions of this Plan.

#### **IX. PAYMENT OF UNCLASSIFIED ALLOWED CHAPTER 11 ADMINISTRATIVE EXPENSES AND ALLOWED UNSECURED PRIORITY CLAIMS**

Payment of allowed Chapter 11 Administrative Expenses and allowed Unsecured Priority Claims not classified under the Plan will be paid as follows under the Debtor's proposed Plan:

Administrative Expenses. Chapter 11 Administrative Expenses are identified as follows:

- (a) Counsel (Weinman & Associates, P.C.) employed to represent the Debtor in the within bankruptcy proceeding;

- (b) Accountant (Accounting For Success) employed to provide accounting services to the Debtor;
- (c) Appraiser (Dickensheet & Associates, Inc.) employed to appraise the Debtor's vehicles;
- (d) Fees required to be paid to the U.S. Trustee pursuant to 28 U.S.C. §1930; and
- (e) Post-petition fees and expenses, including taxes, incurred by the Debtor's bankruptcy estate in the ordinary operation and management of the Debtor's business and/or financial affairs.

The holders of allowed expenses in Paragraphs (a), (b), and (c) shall submit their requests for payment to the Court and the Debtor shall pay such Allowed Chapter 11 Administrative Expenses only upon approval by and in the amount allowed by the Court. The Debtor believes that it may owe Weinman & Associates, P.C. \$20,000; Accounting For Success \$500; and, Dickensheet & Associates, Inc. \$0.00 for services performed through the conclusion of the Chapter 11 case.

The holders of allowed expenses in Paragraphs (a), (b), and (c) above shall be paid the allowed amounts of their unpaid Chapter 11 Administrative Expenses on the Effective Date of the Plan provided the Court has entered final, non-appealable orders allowing such Administrative Expenses or as may be otherwise agreed to by these Administrative Claimants and the Debtor.

U.S. Trustee fees required to be paid pursuant to 28 U.S.C. §1930 identified in Paragraph (d) above shall be timely paid until such time as the within Chapter 11 case is dismissed, converted or closed by order of the Bankruptcy Court. The Debtor estimates



that it may owe the U.S. Trustee \$0.00 for unpaid quarterly fees calculated based upon its previous disbursements to its secured and unsecured creditors with allowed claims.

Fees and other expenses identified in Paragraph (e) above (ordinary course expenses) shall be paid pursuant to the terms of any agreement and/or in the ordinary course of the Debtor's business and/or financial affairs according to ordinary business terms. Any unpaid post-petition taxes owing by the Debtor's bankruptcy estate will be paid in full on or before the Effective Date of the Plan.

Allowed Unsecured Priority Claims of Taxing Authorities

Any Allowed Unsecured Priority Claim of any taxing authority will be paid in full to such taxing authority with appropriate interest on the Effective Date. The Debtor believes that it will not owe any unsecured priority claims to taxing authorities.

**X. MEANS FOR IMPLEMENTATION OF THE PLAN**

Upon confirmation of the Plan, the Reorganized Debtor will implement its Plan as follows:

- (a) Upon entry of the Confirmation Order, the Estate's Assets shall be transferred to the Reorganized Debtor.
- (b) The Reorganized Debtor will continue to operate its business following entry of the Confirmation Order and will factor its accounts receivable with Benefactor Funding Corp. as agreed to between the Debtor and Benefactor Funding Corp. pursuant to the terms of an Agreement which has been approved by the Bankruptcy Court.
- (c) The Reorganized Debtor will pay creditor classes established under the Plan. The Reorganized Debtor will appoint T. Russell Strobridge to implement the

provisions of the Confirmed Plan. Mr. Strobridge will not be compensated for his services in implementing the provisions of the Confirmed Plan.

- (d) The Reorganized Debtor will pay the holders of allowed Chapter 11 Administrative Expenses, except for the U.S. Trustee, on the Effective Date of the Plan unless otherwise agreed to between these parties and the Reorganized Debtor, or as otherwise provided for in the Plan.
- (e) Objections to Claims:
  - (1) The Reorganized Debtor shall object, when appropriate to any administrative expense, secured or unsecured claim; and
  - (2) The Reorganized Debtor shall bring any preference or fraudulent conveyance claims as appropriate.
  - (3) The Reorganized Debtor will review all Proofs of Claim filed in its case and may or may not object to the allowability of such claims.
- (f) Payment of Allowed Claims and Administrative Expenses Under the Plan.  
The Reorganized Debtor shall make payments to creditors and administrative expense claimants as provided for under the terms of the Plan. Payments under the Plan shall be made by check and shall be mailed to each creditor and/or administrative expense claimant with an allowed claim at the address set forth in the Reorganized Debtor's Plan, Statements and Schedules filed with the Court or as set forth in any Proof of Claim, other pleading or change of address notification, etc. filed with the Court.
- (g) Unclaimed Distributions. For a period of one year following the date a payment is due under the Plan, the Reorganized Debtor shall retain in a

reserve account for issuance any unclaimed distributions for the benefit of the holders of allowed claims and/or administrative expenses which have failed to claim such distributions. Following the one year period after such distributions are due, the holders of allowed claims or allowed administrative expenses theretofore entitled to such distributions held in such reserve account shall be distributed to the holders of allowed claims as provided for under the terms of the Plan.

#### **XI. UNEXPIRED EXECUTORY CONTRACTS AND LEASES**

Unexpired Executory Contracts and Leases:

- (a) All unexpired executory contracts and/or leases of the Reorganized Debtor neither assumed pursuant to the Plan nor pursuant to an order of the Court prior to confirmation of the Plan shall be deemed to have been rejected upon confirmation of the Plan. These unexpired executory contracts and/or leases are at this time identified as follows: None.

#### **XII. MISCELLANEOUS PROVISIONS OF THE REORGANIZED DEBTOR'S PLAN**

Procedures for Resolving Contested Matters:

- (a) The Reorganized Debtor's objections to claims shall be filed with the Court and shall be served on the holder of each of the claims to which objections are filed by no later than 180 days after the Effective Date. The Reorganized Debtor shall litigate to judgment, settle or withdraw objections to all such Disputed Claims; and

- (b) No payments or distributions shall be made under the Confirmed Plan with respect to all or any portion of a Disputed Claim or Administrative Expense unless and until all objections to such Disputed Claim or Administrative Expense have been determined by Final Order of the Court. Payments and distributions to holders of Disputed Claims or Administrative Expenses under the Confirmed Plan, to the extent such become Allowed Claims or Administrative Expenses, shall be made in accordance with the provisions of this Plan.

Compromise and Settlement of Claims and/or Disputes: The Reorganized Debtor shall be authorized to compromise and settle any claim and/or dispute which it may have against any entity or which may have been brought by any entity against the Reorganized Debtor. Any such compromise or settlement shall be subject to approval by the Bankruptcy Court after notice and opportunity for hearing as provided for pursuant to Rule 9013 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Colorado, unless otherwise ordered by the Court.

Provisions for Execution and Supervision of the Plan: Retention of Jurisdiction:

The Court shall retain and have exclusive jurisdiction over the Chapter 11 case for the following purposes to the extent authorized by the Bankruptcy Code ("Code"):

- (1) To determine any and all objections to the allowance of claims;
- (2) To determine any and all applications for allowances of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Code or the Plan;

- (3) To determine any applications pending on the Effective Date of the Plan for the rejection or assumption of executory contracts or unexpired leases for the assumption and assignment, as the case may be, of those executory contracts or unexpired leases to which the Reorganized Debtor is a party or with respect to which the Reorganized Debtor may be liable, and to hear and determine, and if need be, to liquidate any and all claims arising therefrom;
- (4) To determine any and all applications, adversary proceedings and contested or litigated matters that may be pending on the Effective Date of the Plan;
- (5) To consider any modifications of the Plan, remedy any defect or omission or reconcile any inconsistency in any Order of the Bankruptcy Court, including the Confirmation Order;
- (6) To determine all controversies, suits and disputes that may arise in connection with or interpretation, enforcement or consummation of the Plan;
- (7) To consider and act on the compromise and settlement of any claim or cause of action by or against the Reorganized Debtor's Estate;
- (8) To resolve any pending disputes regarding the Reorganized Debtor's interest in its Assets;
- (9) To issue orders in aid of execution of the Plan to the extent authorized by 11 U.S.C. §1142 of the Code; and

- (10) To determine such other matters as may be set forth in the Confirmation Order or as may arise in connection with the Plan or the Confirmation Order.

The Plan may be amended by the Reorganized Debtor before or after the Confirmation Date as provided in 11 U.S.C. §1127 of the Code.

Payment of Fees Pursuant to 11 U.S.C. §1129(12): All fees required to be paid by 28 U.S.C. §1930 will be paid as required therein until such time as the within Chapter 11 case is dismissed, converted or closed by order of the Bankruptcy Court. The Reorganized Debtor shall file quarterly post-confirmation reports until the case is closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

Modification of Payment Terms: The treatment of any Allowed Claim may be modified or reduced at any time after the Confirmation Date upon the consent of the creditor whose Allowed Claim treatment is being modified.

Retention of Liens: Except as may be otherwise provided for in this Plan, creditors whose allowed claims are secured by lien(s) against the Reorganized Debtor's Assets or otherwise claim an interest in such Assets shall retain such liens to the extent of its allowed secured claims and in the same priority as its pre-petition liens or, shall retain its interest in such Assets to the same extent and in the same priority as its pre-petition interests in such Assets.

Debtor's Assets: Except as provided for in the Plan or in the Confirmation Order, upon Confirmation of the Plan, the Reorganized Debtor shall be vested with full ownership of and dominion over its Assets free and clear of all claims, liens, charges and other

interests of creditors arising prior to the filing of the bankruptcy petition and except as otherwise provided in the Plan.

Final Report: The Reorganized Debtor will file a Final Report and seek to obtain a Final Decree administratively closing its Chapter 11 proceeding within 180 days of the Effective Date.

Default: In the event of a default by the Reorganized Debtor with respect to payments to creditors under its Plan, such creditors shall be entitled to take action to collect the amount owed under the Plan with whatever collection remedies it normally would have available when payments to such creditors are not made as scheduled were this case not in bankruptcy. The creditors shall give the Reorganized Debtor written notice of any default and the Reorganized Debtor shall have ten (10) calendar days to cure such default. Any failure to act on any default or acceptance of late payments will not act as a waiver by the creditor to act on further defaults.

### **XIII. RISK FACTORS**

Several factors could adversely affect the Reorganized Debtor following confirmation which in turn could impact the Reorganized Debtor's performance under its Plan. These factors may include the following:

- (1) The Bankruptcy Court may deny confirmation of the proposed Plan.
- (2) The Bankruptcy Court may not confirm the Reorganized Debtor's Plan as projected and the Effective Date of the Plan may not occur on or before April 24, 2017, which could delay the distributions to the various creditor classes under the Plan.

(3) The Debtor may not generate sufficient income to pay its creditors as provided for under its Plan. The Debtor believes this to be highly unlikely. The Debtor has prepared financial projections which are attached hereto as Exhibit "D", which the Debtor believes establishes the Debtor's ability to fund its confirmed Plan.

#### **XIV. EFFECT OF CONFIRMATION OF THE PLAN ON DEBTOR AND CREDITORS**

The terms of the confirmed Plan will bind the Reorganized Debtor and all of its creditors with respect to the re-payment of claims provided for in the Plan whether or not the holders of such claims vote to accept the Plan.

#### **XV. COMPARISON OF PLAN TO LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The Debtor projects that under its Plan, the Debtor's general unsecured creditors (with allowed unsecured claims) in Classes 2 and 3 may realize a return of 100% of their allowed unsecured claims. The Debtor estimates that liquidation under Chapter 7 of the Bankruptcy Code would result in a payment of 0% to general unsecured creditors with allowed unsecured claims (See Exhibit "E").

Under Chapter 7 of the Bankruptcy Code, a trustee would be appointed to liquidate Debtor's Assets. The Debtor's Assets are encumbered by valid liens. The value of the Debtor's Assets is less than the amount that is owed to secured creditors with allowed claims. As such, the Debtor believes that there would be no Assets available to pay Chapter 7 administrative expenses, allowed Chapter 11 administrative expenses, or allowed unsecured claims. A liquidation analysis is attached hereto as Exhibit "E".



## **XVI. BEST INTEREST OF CREDITORS**

The Bankruptcy Code provides that in order to confirm its Plan of Reorganization, Debtor must satisfy the “best interest of creditors test”. Simply stated, this test requires that each holder of an impaired claim or interest must either vote to accept Debtor’s Plan or receive what such holder would receive in a hypothetical Chapter 7 liquidation under the Bankruptcy Code.

Debtor’s proposed Plan meets this requirement of the Bankruptcy Code since each creditor of the Debtor will receive at least as much, if not more (allowed secured claimant projected to receive 100% amount of allowed secured claim with interest, unsecured creditors projected to receive 100% of claims) than they would receive in a Chapter 7 liquidation case (where unsecured creditors are projected to receive 0% on allowed unsecured claims). A liquidation analysis is attached hereto as Exhibit “E”.

## **XVII. CRAMDOWN UNDER THE PLAN**

If an impaired class does not accept the Plan, the Plan can be “crammed down” or forced on such class upon a showing that the Plan is “fair and equitable”. The concept of cramdown of Debtor’s Plan is best summarized as follows: If a holder of a secured claim objects to confirmation of the Plan, the Plan may be confirmed over such objection if: (1) the creditor retains the lien on the collateral to the extent of the value of the collateral and (2) the creditor is paid with interest over the life of the Plan the amount of the allowed secured claim. If an unsecured creditor objects to the Plan, the Plan may be confirmed over that objection if: (1) the unsecured creditor is receiving under the Plan at least what it would receive in a Chapter 7 liquidation, and (2) the holders of any claims or interest junior to the unsecured creditor (i.e., equitable interests in the Debtor), will receive nothing

until unsecured creditors are paid in full. This rule is known as the “absolute priority rule” in bankruptcy. It is the opinion of the Debtor that with respect to its secured creditors with allowed claims, its proposed Plan is fair and equitable since such creditors will retain their security interests securing the allowed amount of their claims and will be paid the allowed amount of their secured claims with interest. With respect to Debtor’s unsecured creditors, Debtor believes that it will meet the fair and equitable test because the Plan does not violate the absolute priority rule. It is estimated by the Debtor that unsecured creditors will receive a 100% plus interest repayment on their allowed unsecured claims. The holders of the pre-petition equitable interests in the Debtor, the Debtor’s principals, will retain their equitable pre-petition interests after the Effective Date of the Plan. Because unsecured creditors will be paid in full under the Plan, the Plan does not violate the absolute priority rule.

#### **XVIII. FEDERAL TAX CONSEQUENCES OF THE CONFIRMED PLAN**

The Debtor knows of no adverse federal tax consequences which will occur upon confirmation of the Debtor’s Plan. However, creditors should consult with their own tax advisor concerning the effect of confirmation of the Plan on its individual circumstances.

#### **XIX. RECOMMENDATION**

The Debtor urges you to complete and sign the enclosed ballot, and vote in favor of its Plan before the deadline established by the Court in its Order or Notice which is enclosed with this Plan.

DEBTOR-IN-POSSESSION  
TRANSPORT EXPRESS, LLC

/s/ T. Russell Strobridge  
Manager

Respectfully submitted,

WEINMAN & ASSOCIATES, P.C.

By: /s/ Jeffrey A. Weinman  
Jeffrey A. Weinman, #7605  
730 17<sup>th</sup> Street, Suite 240  
Denver, CO 80202-3506  
Telephone: (303) 572-1010  
Facsimile: (303) 572-1011  
[jweinman@weinmanpc.com](mailto:jweinman@weinmanpc.com)  
*Counsel for Debtor-in-Possession  
Transport Express, LLC*