

Randyl Meigs
Texas Bar No. 13909100
McDonald Sanders, P.C.
777 Main Street, Suite 2700
Fort Worth, Texas 76102
(817) 347-3632 Telephone
(817) 334-0271 Facsimile
rmeigs@mcdonaldlaw.com
Attorneys for Fort Worth & Western Railroad Company

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
Vista Proppants and Logistics, LLC, et al.	§	Case No. 20-42002-elm11
	§	
	§	Jointly Administered
Debtors.	§	

**OBJECTION OF FORT WORTH & WESTERN RAILROAD
COMPANY TO NOTICE OF CURE PROCEDURES**

TO THE HONORABLE EDWARD LEE MORRIS, U.S. BANKRUPTCY JUDGE:

NOW COMES Fort Worth & Western Railroad Company, and files its Objection to
Notice of Cure Procedures [Docket No. 407] ("Cure Notice").

Background Facts

1. Fort Worth & Western Railroad Company ("FWWRR") is a rail carrier with its principal offices located at 6300 Ridglea Place, Suite 1200, Fort Worth, Texas 76116.
2. In connection with its rail carrier business, FWWRR provides railroad transportation services to various customers.
3. In the Cure Notice, FWWRR is identified as party to fifteen (15) executory contracts with Debtor Lonestar Prospects, Ltd., (Case No. 20-42006) ("Lonestar Prospects"), and is identified as party to four (4) executory contracts with Debtor Maalt,



LP, (Case No. 20-42008) (“Maalt”), which contracts are identified as numbers 42 through 60 on Schedule 1 to the Cure Notice, and are set forth in the chart below:

#	Counterparty Name	Debtor Counterparty	Contract Description	Contract Date	Proposed Cure
42	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease Agreement	7/21/2017	\$0.00
43	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease Agreement	2/15/2011	\$0.00
44	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease Agreement	1/1/2015	\$0.00
45	Fort Worth & Western Railroad Co.	Maalt, LP	Service Agreement	5/20/2015	\$0.00
46	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease Agreement	9/1/2017	\$0.00
47	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease Agreement	11/26/2012	\$0.00
48	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease Agreement	9/1/2017	\$0.00
49	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Rail Service Agreement	9/1/2017	\$0.00
50	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Rail Service Quote	1/1/2018	\$0.00
51	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Rail Service Quote	1/1/2019	\$0.00
52	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Unit Train Incentive	7/1/2017	\$0.00
53	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Railroad Services Agreement	11/26/2012	\$0.00
54	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Demurrage Agreement	9/1/2012	\$0.00
55	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Demurrage Agreement	2/1/2017	\$0.00
56	Fort Worth & Western Railroad Co.	Maalt, LP	Lease Agreement	5/10/2015	\$0.00
57	Fort Worth & Western Railroad Co.	Maalt, LP	Railroad Agreement	3/23/2018	\$0.00
58	Fort Worth & Western Railroad Co.	Maalt, LP	Railroad Agreement	1/19/2015	\$0.00
59	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Railroad Agreement	5/22/2015	\$0.00
60	Fort Worth & Western Railroad Co.	Lonestar Prospects, Ltd.	Lease / Track Use Agreement	10/1/2015	\$0.00

4. The Proposed Cure amount for each of the nineteen (19) items identified as executory contracts in the Cure Notice is shown as \$0.00.

5. From reviewing the contracts and other documents identified in the Cure Notice, it appears that certain contracts may have terminated and others were never

executed. Additionally, with respect to certain contracts which Lonestar Prospects indicates that it may assume, the Proposed Cure amount is not adequate.

Objections to Cure Notice

6. FWWRR objects to the Cure Notice for the reasons described below with respect to each document or contract identified below by its reference number in the Cure Notice.

- a. Item No. 42; Property Lease Agreement. This Property Lease Agreement was never executed by FWWRR and is therefore not an executory contract subject to assumption by the Lonestar Prospects under 11 U.S.C. § 365.
- b. Item No. 43; Track Lease Agreement. This Track Lease Agreement states in paragraph 3 that it is for a term of five (5) years commencing on March 1, 2011 and ending on February 28, 2016, and therefor appears to have terminated on February 28, 2016. As this Track Lease Agreement appears to have terminated, it is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.
- c. Item No. 44; Supplemental Agreement. This document is unsigned, but appears to relate to the Track Lease Agreement (No. 43 above). This Supplemental Agreement does not appear to have been executed by FWWRR and if it was executed by FWWRR, it relates to an agreement which appears to have terminated on February 28, 2016. For those reasons, this document is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.

- d. Item No. 45; Letter from Maalt, LP to FWWRR dated May 20, 2015.
This document has not been signed by FWWRR and appears to refer to an extension of a Railroad Services Agreement through May 21, 2017. This Letter does not appear to be an executory contract subject to assumption, and if it is subject to assumption, it would have terminated on May 21, 2017. For those reasons, this Letter is not subject to assumption by Maalt under 11 U.S.C. § 365.
- e. Item No. 48; Confidential Railroad Services Agreement. This Confidential Rail Services Agreement was never executed by Lonestar Prospects or FWWRR and is therefore not a contract subject to assumption by the Lonestar Prospects under 11 U.S.C. § 365.
- f. Item No. 49; Confidential Railroad Services Agreement. This Confidential Railroad Services Agreement states in paragraph 3 that it is for a term of no more than seven (7) years commencing on the Effective Date of November 26, 2012. Accordingly, it appears that this agreement terminated no later than November 26, 2019 and is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.
- g. Item No. 50; Letter from FWWRR dated November 1, 2017. This Letter is a quote for train and manifest rail services for the year 2018. The Letter does not appear to be a contract subject to assumption and, in any event, the quote provided in the letter terminated on December 31, 2018. For those reasons, this Letter is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.

- h. Item No. 51; Letter from FWWRR dated December 10, 2018. This Letter is a quote for train and manifest rail services for the year 2019. The Letter does not appear to be a contract subject to assumption and, in any event, the quote provided in the letter terminated on December 31, 2019. For those reasons, this Letter is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.
- i. Item No. 52; Unit Train Incentive agreement. This Unit Train Incentive agreement is for a term of three (3) years and is dated July 1, 2017 and appears to have been executed by Lonestar Prospects on July 14, 2017. It appears that this Unit Train Incentive agreement expired by its terms in July, 2020 and is therefore not subject to assumption by the Lonestar Prospects under 11 U.S.C. § 365.
- j. Item No. 53; Confidential Railroad Services Agreement. This Confidential Railroad Services Agreement states in paragraph 3 that it is for a term of no more than seven (7) years commencing on the Effective Date of November 26, 2012. Accordingly, it appears that this agreement terminated no later than November 26, 2019 and is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.
- k. Item No. 54; Confidential Demurrage Agreement. This Confidential Demurrage Agreement is listed in the Cure Notice with a Proposed Cure amount of \$0.00. However, FWWRR provided pre-petition services to Lonestar Prospects under this agreement in the amount of \$2,981.43, which remain unpaid. This amount is shown on the

FWWRR invoice attached as Exhibit A-2 to the Proof of Claim of FWWRR (Claims Register No. 210). FWWRR objects to the assumption of this Confidential Demurrage Agreement unless Lonestar Prospects cures the payment default by paying FWWRR the \$2,981.43 pre-petition amount owed in accordance with 11 U.S.C. § 365 (b)(1)(A).

l. Item No. 55; Amendment 1 to Confidential Demurrage Agreement.

This Amendment 1 to Confidential Demurrage Agreement ("Amendment") appears to amend the Confidential Demurrage Agreement (Item No. 54 above). For the reasons stated with respect to Item No. 54 above, FWWRR objects to any assumption of this Amendment in connection with the Confidential Demurrage Agreement unless Lonestar Prospects is required to cure by paying FWWRR the \$2,981.43 pre-petition amount owed.

m. Item No. 55; Confidential Rail Services Agreement. This Confidential Railroad Services Agreement states in paragraph 3 that it is for a term of a maximum of seven (7) years commencing on November 26, 2012, and therefor appears to have terminated in November 2019. As this Confidential Railroad Services Agreement appears to have terminated, it is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.

n. Item No. 56; Letter from Maalt, LP dated May 20, 2015. This document has not been signed by FWWRR and appears to refer to an extension of a Property Lease Agreement, which Property Lease Agreement is

not identified in the Cure Notice. This Letter does not appear to be an executory contract subject to assumption. However, if this Letter is subject to assumption, it would be assumed in connection with the underlying Property Lease Agreement, which is not identified in the Cure Notice as an executory contract. For the reasons stated, this Letter is not subject to assumption by Maalt under 11 U.S.C. § 365.

- o. Item No. 57; Letter from Maalt, LP to FWWRR dated March 23, 2018.

This document has not been signed by FWWRR and appears to refer to an extension of a Confidential Railroad Services Agreement through May 21, 2019. This Letter does not appear to be an executory contract subject to assumption. However if this Letter is subject to assumption, it would be assumed in connection with the underlying Confidential Railroad Services Agreement, which is not identified in the Cure Notice as an executory contract to be assumed by Maalt. For the reasons stated, this Letter is not subject to assumption by Maalt under 11 U.S.C. § 365.

- p. Item No. 58; Letter from Maalt, LP to FWWRR dated January 19, 2015.

This document has not been signed by FWWRR and appears to refer to an extension of a Confidential Railroad Services Agreement through May 21, 2016. This Letter does not appear to be an executory contract subject to assumption. However if this Letter is subject to assumption, it would be assumed in connection with the underlying Confidential Railroad Services Agreement, which is not identified in the Cure Notice

as an executory contract to be assumed by Maalt. For the reasons stated, this Letter is not subject to assumption by Maalt under 11 U.S.C. § 365.

- q. Item No. 59; Supplemental Agreement. This Supplemental Agreement is dated May 22, 2015 and states that it expires on May 21, 2020 and therefore, appears to have previously terminated. For this reason, this Supplemental Agreement is not subject to assumption by Lonestar Prospects under 11 U.S.C. §365.
- r. Item No. 60; Lease and Track Use Agreement. This Lease and Track Use Agreement states in Article 2.A. that it, “begins on the Effective Date and, unless earlier terminated as provided herein, will last four (4) years and eight (8) months.” The Effective Date shown on page one is October 1, 2015. Accordingly, it appears that this Lease and Track Use Agreement terminated on January 31, 2020. As this Lease and Track Use Agreement appears to have terminated, it is not subject to assumption by Lonestar Prospects under 11 U.S.C. § 365.

7. Should Lonestar Prospects elect to assume the Confidential Demurrage Agreement and Amendment (Item Nos. 54 and 55), it should be required to pay FWWRR the unpaid pre-petition amounts due of \$2,981.43 as the required cure amount.

Prayer

As set forth above, FWWRR objects to the proposed cure amounts set forth in the Cure Notice with respect to the Confidential Demurrage Agreement and the Amendment (Item Nos. 54 and 55) and requests that the Court find the cure amount to be \$2,981.43

with respect to the Confidential Demurrage Agreement and the Amendment. FWWRR further objects to the assumption of the other specific documents and contracts described above for the reasons stated.

Fort Worth & Western Railroad Company prays for such other and further relief to which it may be entitled.

Dated: September 10, 2020.

Respectfully submitted:

/s/ Randy Meigs

Randy Meigs
Texas Bar No. 13909100
McDonald Sanders, P.C.
777 Main Street, Suite 2700
Fort Worth, Texas 76102
Telephone: (817) 347-3632
Facsimile: (817) 334-0271
Email: rmeigs@mcdonaldlaw.com

**Attorneys for Fort Worth & Western
Railroad Company**

CERTIFICATE OF SERVICE

I, hereby certify that, a true and correct copy of the above and foregoing Objection of Fort Worth & Western Railroad Company has this 10th day of September, 2020, been served through the Court's Electronic Case Filing (ECF) system on all parties registered to receive electronic notices in this case through the ECF system, and served separately by email on the parties listed on the Confirmation Service List as shown below:

Stephen M. Pezanosky (stephen.pezanosky@haynesboone.com);
Matthew T. Ferris (matt.ferris@haynesboone.com);
David L. Staab (david.staab@haynesboone.com);
Charles Persons (cpersons@sidley.com);
Dennis Twomey (dtwomey@sidley.com);
Patrick Carew (pcarew@kilpatricktownsend.com);
Todd Meyers (tmeyers@kilpatricktownsend.com);
David Posner (dposner@kilpatricktownsend.com);
Kelly Moynihan (kmoynihan@kilpatricktownsend.com); and
Erin Schmidt (Erin.Schmidt2@usdoj.gov).

/s/ Randy Meigs

Randy Meigs

I:\03704\0139\14S2426.DOCX