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Attorneys for Unsecured Creditors Committee

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

| | | |
|---------------------------------------|---|--------------------------------|
| In re |) | Case No. 11-62723 |
| |) | |
| Olsen Agricultural Enterprises LLC, |) | Chapter 11 |
| an Oregon limited liability company , |) | |
| |) | RESPONSE OF THE GENERAL |
| Debtor. |) | UNSECURED CREDITORS' COMMITTEE |
| |) | TO THE DISCLOSURE STATEMENT |

The General Unsecured Creditors' Committee (the "Committee") by and through its counsel, Lane Powell PC, files this response (the "Response") to the Debtor's Disclosure Statement dated September 29, 2011 (the "Disclosure Statement") and requests that the Disclosure Statement be amended to address the following issues and concerns of the Committee prior to the mailing of the Disclosure Statement to creditors for voting. ¹

¹ The undersigned as counsel to the Committee has been communicating with Mr. Foraker regarding many of the issues set forth in this Response. Mr. Foraker kindly provided the Committee with some additional time to comment on the Disclosure Statement based on timing of the Committee meeting and related scheduling issues. This Response is being filed as a precautionary measure only because these discussions have not yet been completed. The Committee through its counsel believes that most if not all of the concerns raised in the Response will be resolved prior to the hearing on the Disclosure Statement .

1. Issues Related to Ownership and Management of the Debtor: Section VII. A.

The Committee believes that prior to the mailing of the Disclosure Statement the owners of the Debtors need to finally resolve the issues concerning their respective percentages of ownership of the Reorganized Debtor and Vineyard Co as such issues clearly affect the management of the Debtor and are a continuing distraction to the Debtor's reorganization efforts.

More specifically:

(a) Resolution of the Ownership and Board of Managers Needs to Occur Prior to Mailing Disclosure Statement. There is no clear path to the final resolution of the ownership interests in the Reorganized Debtor set forth on page 27 of the Disclosure Statement. Instead the Disclosure Statement merely states "Except as otherwise determined by the Court and provided in the Confirmation Order . . . "Disclosure Statement p. 27, lines 2-4. Under this proposal, the Board of Managers and voting rights of the parties in making significant decisions on behalf of the Reorganized Debtor and Vineyard Co could be altered significantly after the Effective Date. Alternatively, the Plan and Disclosure Statement need to finally establish the proposed percentages set forth on page 27 prior to the mailing of the Disclosure Statement to creditors to solicit their votes. Additionally, copies of the final organizational documents (i.e. management agreements) for both the Reorganized Debtor and for Vineyard Co. should be included as Exhibits to the Disclosure Statement and the Plan prior to the voting deadline.

(b) Appointment of the Operations Manager. If possible, the Operations Manager needs to be named and his or her compensation needs to be set prior to the Disclosure Statement being mailed to creditors. If not possible, the potential qualifications, the potential nature of the candidate pool and means of selection of an Operations Manager and a range of compensation should be described in detail. Additionally, the Operations Manager's role and rights relative to decision-making in connection with the Reorganized Debtor and Vineyard Co, *vis a vis* the Farm Manager needs to be better defined in the Disclosure Statement. For example, the Disclosure

Statement should describe who will be in charge of determining decisions and how such decisions will be made on issues including the hiring and firing and compensation of employees and consultants. These essential details are not provided on pages 27 and 28 of the Disclosure Statement.

(c) Terms of the Consulting Contracts Need to be Disclosed. The terms of any consulting contracts and the specific role of the consultants that will be employed as part of the Plan should be fully described in the Disclosure Statement prior to Plan voting deadlines (not at or before the confirmation hearing. Additionally, such terms should be in accordance with the market terms for similar types of consulting contracts. Disclosure Statement, p. 28, lines 14-21.

(d) Options or Rights to Acquire Ownership. The Disclosure Statement provides that options or other rights to acquire ownership interests in the Reorganized Debtor and/or Vineyard Co. may be granted by these companies or their owners after the Effective Date, but provides that the operating agreements will provide “restrictions” on such rights, without any further description. Disclosure Statement, p. 27, lines 9-13. The proposed restrictions and rights to acquire ownership interests and any impact on voting rights and management of the Reorganized Debtor or Vineyard Co. needs to be fully disclosed.

2. Means for Allocation of the Portion of the Rabo Debt to Vineyard Co. Needs to be Discussed and Described in More Detail. It appears that the \$8 million of Rabo Agrifinance Debt (“Rabo”) allocated to Vineyard Co. results in a disproportionate LTV as compared to the amount of Rabo debt assigned to the Reorganized Debtor when such debt amounts are compared to the values allocated to Vineyard Co. and to the Reorganized Debtor in the Liquidation Analysis. See Section 3.9: of the Plan (Treatment of Rabo’s Class 9 Claim) vs. the property values listed on Exhibit B to the Disclosure Statement, the Liquidation Analysis. If this is correct it would seem to disadvantage the Reorganized Debtor and its unsecured creditors. The Disclosure Statement needs to set forth the allocation of the actual debt amounts to the property values of both the Reorganized Debtor and Vineyard Co. in the body of the Disclosure

Statement. See discussion *infra*, paragraph 3.(a). To the extent the LTV for the Reorganized Debtor *vis a vis* Vineyard Co. is disproportionate the Disclosure Statement should explain the reasons for such disparity and the impact on the ability of the Reorganized Debtor to comply with the terms of the terms of the Plan.

3. The Description of the Treatment of the Claims of the Unsecured Creditors.

(a) Rationale for Vineyard Co. as Guarantor and the Treatment of Unsecured Creditors Upon Sale of Vineyard Co. The Disclosure Statement provides that Vineyard Co. is a guarantor not a co-obligor of the payments to be made to the unsecured creditors under the Plan. See Plan, Class 3.13, p. 11-12. There is no rationale for this treatment set forth in the Disclosure Statement. Given the nature of the proposed payments to unsecured creditors (i.e. from 10% of the cumulative EBITDA of the Reorganized Debtor)² and the lack of any liens held by the Unsecured Creditors in either the Reorganized Debtor or Vineyard Co, this treatment does not appear to be justified. To the extent that the Debtor proposes to retain this treatment of unsecured creditors under the Plan, the Effective Date Balance Sheet for Vineyard Co. and the Reorganized Debtor needs to be set forth in the body of the Disclosure Statement and the Disclosure Statement also should describe the treatment of unsecured creditors' claims upon the sale of Vineyard Co. or its property in an amount in excess of the allocated debt of Rabo at Vineyard Co.

(b) The Means for Payment of the Balloon Payment to Unsecured Creditors. The Plan provides for payment in full of the unsecured claims together with accrued interest on or before March 30, 2016. See Plan, Section 3.13, pp. 11-12. The Debtors' projections, however, as set forth in Exhibit A to the Disclosure Statement shows that there will be an estimated balance due and owing as of this maturity date of approximately \$1.9 million without any explanation of the source of funds to pay this balloon payment.

² These payment terms are under discussion and review by the Committee.

(c) The Range of Unsecured Claims and Treatment of Contingent and Unliquidated Claims. The Disclosure Statement provides that the range of unsecured claims is estimated to be \$2.7 to \$3 million but there is no description of the source of this estimate or whether such estimate includes the range of potential unliquidated or contingent claims. Disclosure Statement p. 23, lines 2-4. The Disclosure Statement should set forth the source of the estimate, as well as the estimated amounts and means for finally establishing the unliquidated or contingent claim amounts owing to insiders and others.

4. The Rationale for Plan re: Vineyard Co and Nature of Contract Between Vineyard Co. and Reorganized Debtor.

(a) Alternatives to Plan Need to Be More Fully Discussed. The Plan provides for the split of the farming operations and the vineyard operations respectively between the Reorganized Debtor and Vineyard Co. and the continued operations of both entities to be effectuated in part through a \$650,000.00 loan (the "Inter-Company Loan") to be made from the Reorganized Debtor to Vineyard Co. Except for a maturity date for the Inter-Company Loan there is no discussion of the restrictions on use of the Inter-Company Loan proceeds, other payment terms of the Inter-Company Loan including rights upon default set forth in the Disclosure Statement. Disclosure Statement p. 24, lines 8-9. These specifics regarding the Inter-Company Loan need to be set forth in the Disclosure Statement. Additionally, the Disclosure Statement should discuss and describe other alternatives including an orderly liquidation of the Vineyard Co. Property with an estimated time frame and projected cost of such liquidation together with the carrying costs for the estimated period of holding the property prior to sale.

(b) The Contract Between the Reorganized Debtor and Vineyard Co. The Disclosure Statement and the Plan provide generally that the Reorganized Debtor will enter into a contract to provide farming and administrative services to Vineyard Co., but there are no details concerning the monetary compensation related to such services or means for how such compensation is to be set or adjusted over the term of the Plan. Disclosure Statement p. 24, lines

3-5. These details need to be included in the Disclosure Statement to insure that the compensation received by the Reorganized Debtor is within market terms for similar farm management contracts and services.

5. Other Miscellaneous Items.

(a) The Payment of \$100,000 in Attorneys Fees for Original Members. In addition to the issues raised concerning the payment of the \$100,000 in fees to the Original Members as set forth in the Rabo Objection to the Disclosure Statement, at pp. 1-2, the Disclosure Statement needs to provide the justification for such payments. In the absence of settlement of the ownership and management disputes as discussed in Paragraph 1 above, this proposal would not appear to be supportable especially when the initial payment to unsecured creditors is small.

(b) Tax Impacts of Various Aspects of the Plan Should be More Fully Discussed. While the Debtors appear to be pass through entities, the tax implications of items to the parties who remain in management control of the Reorganized Debtor and Vineyard Co. should be discussed to the extent that such tax consequences may drive a particular management decision. For example, to the extent that large capital gains would accrue to the Debtor's management such gains may determine whether sale is considered to be a viable option. The rights of individuals to receive refunds if any based on the treatment under the Plan, the merger or other actions taken pre-petition or post petition should be generally described if known.

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(c) Treatment of Insider Receivables and Payables. The Committee agrees with the statement in Rabo's Objection at p. 2 that the treatment of stockholder receivables and payables need to be included in the Disclosure Statement.

DATED: November 7, 2011

LANE POWELL PC

By: /s/ Mary Jo Heston
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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2011, I caused to be served a copy of the foregoing RESPONSE TO DISCLOSURE, on the following person(s) in the manner indicated below at the following address(es):

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