

DONALD W. FITZGERALD, State Bar No. 095348  
THOMAS A WILLOUGHBY, State Bar No. 137597  
JENNIFER E. NIEMANN, State Bar No. 142151  
FELDERSTEIN FITZGERALD  
WILLOUGHBY & PASCUZZI LLP  
400 Capitol Mall, Suite 1750  
Sacramento, CA 95814  
Telephone: (916) 329-7400  
Facsimile: (916) 329-7435  
dfitzgerald@ffwplaw.com  
twilloughby@ffwplaw.com  
jniemann@ffwplaw.com

Attorneys for ZF in Liquidation, LLC fka Zacky Farms, LLC

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:

ZF IN LIQUIDATION, LLC, a  
California limited liability company  
fka ZACKY FARMS, LLC, a  
California limited liability  
company,

Debtor-In-Possession.

CASE NO. 12-37961

Confirmation Hearing:

Date: August 13, 2013  
Time: 1:32 p.m.  
Courtroom 32  
501 I Street, 6th Floor  
Sacramento, CA

**DEBTOR'S AMENDED PLAN OF LIQUIDATION  
(DATED: JUNE 27, 2013)**

# TABLE OF CONTENTS

<b>PRELIMINARY STATEMENT .....</b>	<b>1</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>2</b>
<b>ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS .....</b>	<b>19</b>
2.1. <b>Criterion of Class. ....</b>	<b>19</b>
2.2. <b>Classes of Claims and Interests.....</b>	<b>19</b>
2.3. <b>Class 1 Claims.....</b>	<b>19</b>
2.4. <b>Class 2 Claims.....</b>	<b>19</b>
2.5. <b>Class 3 Claims.....</b>	<b>19</b>
2.6. <b>Class 4 Claims.....</b>	<b>19</b>
2.7. <b>Class 5 Claims.....</b>	<b>19</b>
2.8. <b>Class 6 Claims.....</b>	<b>19</b>
2.9. <b>Class 7 Claims.....</b>	<b>19</b>
2.10. <b>Class 8 Claims. ....</b>	<b>20</b>
2.11. <b>Class 9 Claims.....</b>	<b>20</b>
2.12. <b>Class 10 Claims.....</b>	<b>20</b>
2.13. <b>Class 11 Claims.....</b>	<b>20</b>
2.14. <b>Class 12 Claims.....</b>	<b>20</b>
2.15. <b>Class 13 Claims. ....</b>	<b>20</b>
2.16. <b>Class 14 Claims.....</b>	<b>20</b>
2.17. <b>Class 15 Claims.....</b>	<b>20</b>
2.18. <b>Class 16 Interests.....</b>	<b>20</b>
<b>ARTICLE III TREATMENT OF UNCLASSIFIED CLAIMS.....</b>	<b>20</b>
3.1. <b>Administrative Claims. ....</b>	<b>20</b>
3.2. <b>Administrative Claim Bar Date. ....</b>	<b>21</b>
3.3. <b>Claims for Professional Fees. ....</b>	<b>21</b>
3.4. <b>Priority Tax Claims. ....</b>	<b>21</b>
3.5. <b>Priority Employee Claims. ....</b>	<b>22</b>
3.6. <b>Other Priority Claims.....</b>	<b>22</b>
<b>ARTICLE IV TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS.....</b>	<b>23</b>

1	4.1.	<b>Class 1 Claims (DIP Lender).</b>	23
2	4.2.	<b>Class 2 Claims (Western Milling).</b>	23
3	4.3.	<b>Class 3 Claims (Dreisbach).</b>	24
4	4.4.	<b>Class 4 Claims (Lillian Zacky Trust).</b>	24
5	4.5.	<b>Class 5 Claims (Office Max North America).</b>	24
6	4.6.	<b>Class 6 Claims (Dave Dodge Service, Inc.).</b>	25
7	4.7.	<b>Class 7 Claims (B&amp;B Quality Food Providers).</b>	26
8	4.8.	<b>Class 8 Claims (Wei Chan DDS).</b>	27
9	4.9.	<b>Class 9 Claims (Idaho Avenue Land Company).</b>	27
10	4.10.	<b>Class 10 Claims (USA Petroleum Corporation).</b>	28
11	4.11.	<b>Class 11 Claims (GFC LLC).</b>	29
12	4.12.	<b>Class 12 Claim (Richard Zacky Trust).</b>	29
13	4.13.	<b>Class 13 Claims (Holders of Permitted Liens).</b>	30
14	4.14.	<b>Class 14 Claims (Settled 503(b)(9) Claims).</b>	30
15	4.15.	<b>Class 15 Claims (General Unsecured Creditors).</b>	31
16	4.16.	<b>Class 16 Interests (Debtor's Members).</b>	31
17		<b>ARTICLE V UNIMPAIRED AND IMPAIRED CLASSES</b>	31
18		<b>ARTICLE VI</b>	31
19		<b>MEANS FOR IMPLEMENTATION OF THE PLAN</b>	31
20	6.1.	<b>Effective Date Transactions.</b>	32
21	6.2.	<b>Revesting of Estate Assets.</b>	32
22	6.3.	<b>Amendment of Operating Agreement.</b>	32
23	6.4.	<b>Management of Liquidating Debtor by Plan Administrator.</b>	33
24	6.5.	<b>Plan Administrator Base Compensation.</b>	33
25	6.6.	<b>Plan Administrator Added Compensation For Collection Activities Related to \$6.4M 503(b)(9) Note.</b>	33
26	6.7.	<b>Plan Administrator Fee Application.</b>	34
27	6.8.	<b>Court Modification of Plan Administrator Cap.</b>	34
28	6.9.	<b>Continued Business of Liquidating Debtor.</b>	34
	6.10.	<b>Secured Sale Notes.</b>	34
	6.11.	<b>Other DIP Lender Obligations.</b>	35
	6.12.	<b>Settlement of Claims and Defenses.</b>	35

1	6.13. Bankruptcy Rule 2004. ....	35
2	6.14. Standing. ....	35
3	6.15. Avoidance Actions. ....	36
4	6.16. Claims Reserve Account. ....	36
5	6.17. Liquidating Debtor Liquidation Budget. ....	37
6	6.18. Limitation of Liability of Plan Administrator. ....	37
7	6.19. Termination of the Committee and Creation of Post-Confirmation Committee. ....	38
8	6.20. Powers of Post Confirmation Committee ....	38
9	6.21. Material Default Under the Plan. ....	39
10	6.22. Payment of Plan Expenses. ....	40
11	6.23. Distribution Procedures. ....	40
12	6.24. Resolution of Disputed Claims. ....	40
13	6.25. Reserve Provisions for Disputed Claims. ....	41
14	6.26. Allocation of Distributions. ....	42
15	6.27. Rounding. ....	43
16	6.28. De Minimis Distributions. ....	43
17	6.29. Unclaimed Funds. ....	43
18	6.30. Disputed Payments. ....	43
19	6.31. Unclaimed Distributions. ....	43
20	6.32. Successor Plan Administrator. ....	44
21	6.33. Setoffs. ....	44
22	6.34. No Distributions on Late-Filed Claims. ....	45
23	6.35. No Distributions on Amended Claims Filed After the Effective Date. ....	45
24	6.36. Withholding Taxes. ....	45
25	6.37. Post-Effective Date Reports. ....	45
26	6.38. Post-Effective Date Employment and Compensation of Professionals. ....	46
27	6.39. Procedures for Post-Confirmation Motion and Opportunity for Hearing. ....	48
28	6.40. Jurisdictional Limitations on Claims re Plan Implementation. ....	48
	6.41. Destruction of Records. ....	48
	6.42. Dissolution of the Debtor. ....	49
	6.43. Abandonment of Assets. ....	49

1	6.44. Permanent Satisfaction.....	49
2	6.45. Final Decree. ....	50
3	6.46. Closing of Case.. ....	50
4	6.47. U.S. Trustee Fees. ....	50
5	<b>ARTICLE VII</b> .....	50
6	<b>EXECUTORY CONTRACTS</b> .....	50
7	7.1. Assumed Executory Contracts.....	50
8	7.2. Plan Rejection.....	51
9	7.3. Rejection. ....	51
10	7.4. Order Authorizing Rejection.. ....	51
11	<b>ARTICLE VIII CONDITIONS PRECEDENT</b> .....	51
12	8.1. Conditions to Confirmation. ....	51
13	8.2. Conditions to Effective Date. ....	51
14	<b>ARTICLE IX EFFECTS OF CONFIRMATION</b> .....	52
15	9.1. Binding Effect of Plan. ....	52
16	9.2. Revesting of Property Free and Clear. ....	52
17	9.3. Injunction.....	53
18	9.4. No Discharge.....	53
19	9.5. Limitation of Liability. ....	53
20	9.6. Preservation of USDA Police and Regulatory Powers. ....	54
21	<b>ARTICLE X RETENTION OF JURISDICTION</b> .....	54
22	10.1. Pre-Confirmation Modification: .....	54
23	10.2. Post-Confirmation Modification with no Materially Adverse Effect.....	54
24	10.3. Post-Confirmation Material Modification .....	55
25	<b>ARTICLE XI RETENTION OF JURISDICTION</b> .....	55
26	<b>ARTICLE XII MISCELLANEOUS</b> .....	56
27	12.1. Severability of Plan Provisions. ....	56
28	12.2. Governing Law.....	57
	12.3. Headings.....	57
	12.4. Language Interpretation. ....	57
	12.5. Exhibits. ....	57

12.6.	<b>Exemption from Transfer Taxes.....</b>	<b>58</b>
12.7.	<b>Notices. ....</b>	<b>58</b>
12.8.	<b>Computation of Time Periods. ....</b>	<b>58</b>
12.9.	<b>Defects, Omissions and Amendments.....</b>	<b>58</b>
12.10.	<b>Filing of Additional Documents. ....</b>	<b>58</b>
12.11.	<b>Successors and Assigns. ....</b>	<b>58</b>
12.12.	<b>Implementation. ....</b>	<b>59</b>
12.13.	<b>Certain Actions.....</b>	<b>59</b>
12.14.	<b>Waiver of Fourteen (14) Day Stay. ....</b>	<b>59</b>

1 Zacky Farms, LLC, the above-referenced debtor and debtor in possession (the “Debtor”  
2 or the “Proponent”), hereby proposes the following Plan of Liquidation (the “Plan”). All  
3 Creditors<sup>1</sup> should review the Disclosure Statement, and its accompanying exhibits and other  
4 information, before voting to accept or reject the Plan.

5 **PRELIMINARY STATEMENT**

6 The Plan sets forth a proposal for the resolution of all Claims and Interests against the  
7 Debtor. In sum, the Plan provides for the Debtor to continue its wind-down efforts after  
8 confirmation with its administration to be handled by a professional wind-down manager (the  
9 “Plan Administrator”) replacing the Debtor’s Sole Manager, Mr. Keith Cooper, as the  
10 responsible party for the liquidation. Confirmation of the Plan shall constitute and confirm the  
11 appointment of the Plan Administrator, including responsibility and authority to (a) exercise the  
12 rights, power, and authority of the Liquidating Debtor, under the applicable provisions of the  
13 Plan and bankruptcy and non-bankruptcy law, and (b) retain post-confirmation professionals to  
14 represent the Liquidating Debtor and assist the Plan Administrator in performing and  
15 implementing the Plan, including without limitation retaining professionals originally engaged  
16 by the Debtor or the Committee, and (c) otherwise implement the Plan, wind up the affairs of  
17 the Estate and close the Chapter 11 Case.

18 The Plan contemplates the liquidation of all Estate Assets for the benefit of the holders  
19 of Allowed Claims and Allowed Interests. The resulting funds, after payment of Plan  
20 Expenses, will be made available for distribution to holders of Allowed Claims and Allowed  
21 Interests in accordance with the Bankruptcy Code Distribution Priorities in accordance with the  
22 terms of the Plan. The Plan Administrator’s operation of the Liquidating Debtor will be for the  
23 purpose of liquidating and monetizing Estate Assets, which consist primarily of the Secured  
24 Sale Notes, consisting of the \$6.4M 503(b)(9) Note and the \$3.5M Creditor Note.

25 From and after the Effective Date, the Liquidating Debtor, acting through the Plan  
26 Administrator, shall expeditiously seek to collect, liquidate, sell and/or reduce to Cash all Estate

27 <sup>1</sup> Capitalized terms shall have the meanings defined below in Article 1, or if not defined, as  
28 defined in 11 U.S.C. § 101 *et seq.*

1 Assets, including, without limitation, through pursuit of the Secured Sale Notes, and use the  
2 proceeds thereof to fund Plan distributions to creditors.

3 As set forth in the Disclosure Statement, the Proponent believes that the Plan will allow  
4 the holders of Unsecured Claims to receive a meaningful and expeditious return on account of  
5 their Allowed Claims against the Debtor.

6 With the Plan, Creditors will receive a Ballot for voting on the Plan, and a Disclosure  
7 Statement that provides information concerning the Debtor and the Plan. The Disclosure  
8 Statement includes a summary of the assets and liabilities of the Debtor, a summary of what  
9 Creditors and Interest Holders will receive under the Plan, a discussion of certain alternatives to  
10 the Plan, and a summary of the procedures and voting requirements necessary for confirmation  
11 of the Plan. You should thoroughly review both the Plan and Disclosure Statement before  
12 deciding whether you will accept or reject the Plan.

13 As more fully described in the Disclosure Statement, the Plan must be approved by the  
14 requisite number of Creditors and the Bankruptcy Court must find that it meets the applicable  
15 legal standards before the Plan can be confirmed. If the Plan is not confirmed, the Bankruptcy  
16 Court may order the case dismissed, or converted to a liquidating case under Chapter 7 of the  
17 Bankruptcy Code, or the Debtor or other parties in interest may propose a different plan.

18 The Debtor believes that the Plan provides the best mechanism available for maximizing  
19 returns to Creditors and urges Creditors to vote in favor of the Plan.

## 20 **ARTICLE I**

### 21 **DEFINITIONS**

22 For purposes of this Plan, all capitalized terms used herein and not otherwise defined  
23 shall have the meanings set forth below. A term not defined in the Plan, but defined in the  
24 Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to it in the  
25 Bankruptcy Code or the Bankruptcy Rules, unless the context clearly requires otherwise. The  
26 rules of construction used in section 102 of the Bankruptcy Code shall apply to construction of  
27 this Plan. The phrase “as soon as practicable” shall mean the later of (a) as soon as the  
28 Liquidating Debtor is capable of performing, or (b) within ten (10) Business Days of the



1 relevant date. Headings and captions are utilized in this Plan for convenient reference only, and  
2 shall not constitute a part of this Plan for any other purpose.

3 1.1. **“\$3.5M Creditor Note”** shall mean the \$3.5 million secured note provided by the  
4 DIP Lender as part of the Zacky Farms Sale, which is attached as Exhibit 1 and incorporated  
5 herein by this reference.

6 1.2. **“\$3.5M Creditor Note Payment Date”** shall mean the date on which the \$3.5M  
7 Creditor Note is fully and actually paid to the Liquidating Debtor.

8 1.3. **“\$6.4M 503(b)(9) Note”** shall mean the \$6.4 million secured note provided by the  
9 DIP Lender as part of the Zacky Farms Sale, which is attached as Exhibit 2 and incorporated  
10 herein by this reference.

11 1.4. **“503(b)(9) Bar Date”** shall mean January 7, 2013.

12 1.5. **“503(b)(9) Bar Date Order”** shall mean the Order (Docket No. 369) entered on  
13 December 5, 2012.

14 1.6. **“503(b)(9) Claim”** shall mean a Claim for the value of any goods received by the  
15 Debtor within 20 days of the Petition Date in which the goods were sold to the Debtor in the  
16 ordinary course of the Debtor’s business.

17 1.7. **“503(b)(9) Procedures”** shall mean the procedures set forth in the Order (Docket  
18 No. 1108), entered on February 25, 2013.

19 1.8. **“503(b)(9) Settlement”** shall mean the settlement of 503(b)(9) Claims as set forth  
20 in the DIP Lender Settlement Order.

21 1.9. **“503(b)(9) Settlement Election”** shall mean the settlement letter sent to holders of  
22 503(b)(9) Claims on or before March 18, 2013 by the Debtor, which conveyed the offer to  
23 participate in the 503(b)(9) Settlement.

24 1.10. **“Administrative Claim”** shall mean a 503(b)(9) Claim or a Claim for an expense  
25 of administration of the Debtor arising during the period commencing on the Petition Date and  
26 ending on the Effective Date under sections 503(b), 1114(e)(2) or 546(c)(2) of the Bankruptcy  
27 Code and entitled to priority under section 507(a)(2) of the Bankruptcy Code, including, but not  
28 limited to, (i) any actual and necessary cost or expense of preserving the Estate of the Debtor or

1 conducting the business of the Debtor, (ii) administrative expenses previously allowed by the  
2 Bankruptcy Court, (iii) administrative claims that are timely filed prior to the applicable  
3 Administrative Claims Bar Date, (iv) any Tax Claims incurred by the Debtor after the Petition  
4 Date or relating to a tax year or period which occurs after the Petition Date (v) Professional Fees,  
5 and (vi) all fees and charges assessed against the Debtor pursuant to 28 U.S.C. § 1930. For  
6 purposes of this Plan, Administrative Claims shall also include Cure Obligations.

7 1.11. **“Administrative Claims Bar Date”** shall mean for Administrative Claims other  
8 than 503(b)(9) Claims, the first Business Day that is thirty (30) days after the Effective Date  
9 pursuant to which Creditors must file a request for payment of any Administrative Claim that  
10 arose between October 8, 2012 and the Effective Date, for which notice shall be provided by  
11 Proponent in the Notice of Effective Date. For 503(b)(9) Claims, Administrative Claims Bar  
12 Date shall mean the 503(b)(9) Bar Date (January 7, 2013).

13 1.12. **“Administrative Claims Bar Date Order”** shall mean the Confirmation Order  
14 for all Administrative Claims other than 503(b)(9) Claims, and shall mean the 503(b)(9) Bar Date  
15 Order for all 503(b)(9) Claims.

16 1.13. **“Allowed 503(b)(9) Claims”** shall mean 503(b)(9) Claims that are not Settled  
17 503(b)(9) Claims, but which have been Allowed under the 503(b)(9) Procedures.

18 1.14. **“Allowed Claim”** shall mean (other than an Administrative Claim as set forth  
19 below):

- 20 (i) a Claim that appears in the Schedules, except a Claim that is listed as  
21 disputed, contingent or unliquidated, or for which a contrary proof of Claim has been filed;
- 22 (ii) a Claim for which a proof of Claim has been timely filed as of the Bar Date  
23 or Rejection Claim Bar Date, as applicable, and no objection thereto has been filed; or
- 24 (iii) a Claim that has been allowed, but only to the extent allowed (a) by a Final  
25 Order, (b) under this Plan; and
- 26 (iv) With respect to an Administrative Claim, a request for payment that has  
27 been filed prior to the Administrative Claims Bar Date, and in accordance with either section  
28 503(b) of the Bankruptcy Code or the procedures for filing requests for payment of an expense of

1 administration set forth in the Administrative Claims Bar Date Order, and as to which either no  
2 objection has been made on or before any applicable deadline, or if an objection has been made, a  
3 claim has been allowed by Final Order.

4 1.15. **“Allowed Interest”** shall mean any Interest in the Debtor provided: (a) proof of  
5 which was timely and properly filed or, if no proof of interest was filed, which is deemed filed  
6 pursuant to the Bankruptcy Code or this Plan and (b) in either such case an Interest to which no  
7 timely objection to the allowance thereof has been made or to which any objection has been  
8 determined by a Final Order to the extent such objection was determined in favor of a person or  
9 entity asserting an Interest.

10 1.16. **“Allowed Secured Claim”** shall mean that portion of an Allowed Claim (i)  
11 secured by a valid, perfected and enforceable Lien that is not subject to avoidance under  
12 bankruptcy or non-bankruptcy law, in an amount equal to the value, as determined by the  
13 Bankruptcy Court pursuant to sections 506(a) and 1129(b) of the Bankruptcy Code and  
14 Bankruptcy Rule 3012, of the interest of the holder of such Allowed Claim in the property of the  
15 Debtor, the Liquidating Debtor, or the Estate, securing such Allowed Claim, or (ii) in an amount  
16 equal to the amount subject to setoff by the holder of such Claim under section 553 of the  
17 Bankruptcy Code.

18 1.17. **“Allowed Unsecured Claim”** shall mean any Allowed Claim (including any  
19 Rejection Claim) that is not an Allowed Administrative Claim, an Allowed Secured Claim, an  
20 Allowed Priority Employee Claim, an Allowed Priority Employee Benefit Claim, an Allowed  
21 Priority Tax Claim, or an Assumed Obligation.

22 1.18. **“Assumed Contract”** or **“Assumed Contracts”** shall mean each Executory  
23 Contract assumed by the Debtor and assigned to the DIP Lender as part of the Zacky Farms Sale.

24 1.19. **“Assumed Obligation”** shall mean any obligation assumed by the DIP Lender  
25 pursuant to the DIP Lender APA and/or the DIP Lender Settlement Order.

26 1.20. **“Assumption and Cure Order”** shall mean, with respect to any Assumed  
27 Contract, an order of the Bankruptcy Court approving the assumption of such Executory Contract,  
28 and determining any Cure Obligation with respect thereto. The Confirmation Order may

1 constitute an Assumption and Cure Order.

2 1.21. **“Auction”** shall mean the out of Court auction held on January 15, 2013, at which  
3 substantially all of the Debtor’s assets were made available for sale pursuant to the Sale  
4 Procedures Order.

5 1.22. **“Available Cash”** shall mean, with respect to any distribution contemplated  
6 herein, the aggregate amount of all Cash held by the Liquidating Debtor immediately prior to  
7 such distribution.

8 1.23. **“Avoidance Actions”** shall mean all claims or causes of action arising under  
9 Chapter 5 of the Bankruptcy Code and/or any and all state law equivalents.

10 1.24. **“Ballot”** shall mean the form for acceptance or rejection of the Plan distributed to  
11 those Creditors entitled to vote on the Plan, as such form may be approved by the Bankruptcy  
12 Court and which shall otherwise comply with the requirements of Bankruptcy Rule 3018(c).

13 1.25. **“Bankruptcy Code”** shall mean Title 11 of the United States Code, §§ 101 *et*  
14 *seq.*, as in effect on the Petition Date, as the same thereafter has been and may be amended,  
15 provided such amendments are in effect.

16 1.26. **“Bankruptcy Code Distribution Priorities”** shall mean the distribution waterfall  
17 set forth in section 726 *et seq.* of the Bankruptcy Code.

18 1.27. **“Bankruptcy Court” or “Court”** shall mean the United States Bankruptcy Court  
19 for the Eastern District of California (Sacramento Division), or such other court as may hereafter  
20 exercise jurisdiction over the Chapter 11 Case.

21 1.28. **“Bankruptcy Rules”** shall mean the Federal Rules of Bankruptcy Procedure, as in  
22 effect on the Petition Date, as the same thereafter has been and may be amended, and the Local  
23 Rules of the Bankruptcy Court to the extent applicable to the Chapter 11 Case.

24 1.29. **“Bar Date”** shall mean, as applicable, (i) February 6, 2013, which was the date set  
25 by the Bankruptcy Court as the last date for filing a proof of Claim for a Claim that arose before  
26 the Petition Date for non-Governmental Units, and (ii) April 8, 2013, for Governmental Units.

27 1.30. **“Business Day”** shall mean any day that is not a Saturday, a Sunday or other day  
28 on which banks are required or authorized by any federal, state or local law to be closed in the

City of Sacramento, California.

1.31. **“Cash”** shall mean cash and cash equivalents including, but not limited to, cash on deposit in the bank accounts of the Debtor or the Liquidating Debtor, as applicable, checks, wire transfers, money orders, certificates of deposit, money market or similar investments, and other similar readily marketable securities or instruments.

1.32. **“Chapter 11 Case” “Bankruptcy Case” or “Case”** shall mean the Chapter 11 Case commenced by the Debtor upon the filing with the Bankruptcy Court of a voluntary petition under chapter 11 of the Bankruptcy Code.

1.33. **“Claim”** shall mean a claim against the Debtor within the meaning of section 101(5) of the Bankruptcy Code.

1.34. **“Claimant”** shall mean the holder of a Claim.

1.35. **“Claims Reserve Account”** shall mean an interest bearing bank account or money market account to be established and held for the benefit of holders of Allowed Unsecured Claims by the Liquidating Debtor on or after the Effective Date for the purpose of holding the funds to be distributed under the Plan to Unsecured Creditors and for Plan Expenses, and any interest, dividends or other income earned upon the investment of such Claims Reserve Account.

1.36. **“Class”** shall mean a category or group of Creditors or Interest Holders which are substantially similar to the Claims or Interests of the other Creditors or Interests Holders in such Class, as designated by this Plan pursuant to sections 1122 and 1123 of the Bankruptcy Code.

1.37. **“Committee”** shall mean the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Debtor’s Chapter 11 Case.

1.38. **“Committee Members”** shall mean all members of the Committee on the Effective Date.

1.39. **“Confirmation”** shall mean the approval of the Plan by and subject to the terms of the Confirmation Order.

1.40. **“Confirmation Date”** shall mean the date of Confirmation.

1.41. **“Confirmation Hearing”** shall mean the duly noticed hearing held by the Bankruptcy Court on confirmation of the Plan pursuant to section 1128 of the Bankruptcy Code.

1 The Confirmation Hearing may be adjourned by the Bankruptcy Court from time to time without  
2 further notice other than the announcement of the adjourned date at the Confirmation Hearing.

3 1.42. **“Confirmation Order”** shall mean the order of the Bankruptcy Court, confirming  
4 this Plan and providing for the effectuation of the transactions contemplated by this Plan in  
5 accordance with the terms and provisions hereof and thereof.

6 1.43. **“Creditor”** shall mean any entity that holds a Claim.

7 1.44. **“Creditors Excluded from Plan Administrator Cap”** shall mean: (a) Creditors  
8 holding Claims, which were already paid in the Chapter 11 Case, or for which on the Effective  
9 Date, sufficient Cash exists to fully reserve for or to pay such Claims, and (b) any Creditors with  
10 Claims for Post-Confirmation expenses, including but not limited to Post-Confirmation  
11 Professional fees and expenses that are not Post-Confirmation Professional Contingent Fees.

12 1.45. **“Creditors Subject to Plan Administrator Cap”** shall mean Creditors holding:  
13 (a) Allowed Claims in Classes 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, and 15, (b) Post-Confirmation  
14 Professional Contingent Fees, and (c) Deferred Payment Administrative or Priority Claims paid  
15 from the proceeds of the Secured Sale Notes or other post-Effective Date recovery.

16 1.46. **“CRO”** shall mean Mr. Keith Cooper.

17 1.47. **“Cure Obligation”** shall mean, individually, any monetary amount payable to the  
18 non-debtor party to an Assumed Contract pursuant to section 365(b)(1) of the Bankruptcy Code  
19 as a condition to the assumption of such contract or lease and, collectively, all monetary amounts  
20 payable to all non-debtor parties to all Assumed Contracts.

21 1.48. **“Debt”** shall mean liability on a Claim.

22 1.49. **“Debtor”** shall mean Zacky Farms, LLC, as debtor and debtor in possession in its  
23 Chapter 11 Case.

24 1.50. **“Debtor’s Members”** shall mean (a) the DIP Lender; (b) the Richard N. Zacky  
25 Irrevocable Trust dated 11/25/07; (c) the Barbara Jean Zacky Irrevocable Trust dated 12/30/06;  
26 (d) the Sharon Zacky Wilensky Irrevocable Trust dated 11/26/07; (e) Trust A of the Albert and  
27 Beverly Zacky Trust; and (f) Trust B of the Albert and Beverly Zacky Trust.

28 ///

1.51. **“Deferred Payment Administrative or Priority Claims”** shall mean any Administrative Claims or Priority Claims that the Estate does not have sufficient funds to pay or reserved to pay on the Effective Date.

1.52. **“DIP Facility”** is the debtor in financing facility between the Debtor and the DIP Lender, which was approved via several interim Orders, and finally approved in the DIP Facility Final Order.

1.53. **“DIP Facility Final Order”** shall mean the order finally approving the DIP Facility, which was entered on the Court’s docket on November 13, 2012 (Docket No. 292).

1.54. **“DIP Lender”** shall mean the Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988.

1.55. **“DIP Lender APA”** shall mean the Asset Purchase Agreement by and between the DIP Lender and the Debtor dated as of February 6, 2013 (Docket No. 989), which is attached as Exhibit 3 and incorporated herein by this reference.

1.56. **“DIP Lender Settlement Order”** shall mean the Order (Docket No. 1078) entered on February 21, 2013, which is attached as Exhibit 4 and incorporated herein by this reference, as modified by the Order on Stipulation Among the Movants and Official Committee of Unsecured Creditors Concerning Motion, Pursuant to Federal Rules of Bankruptcy Procedure, Rule 9024, to Correct Clerical Mistake, Oversight or Omission in the Order Granting Joint Motion for Approval of Settlement Among the Official Committee of Unsecured Creditors, the Debtor and the Robert and Lillian Zacky Trust Pursuant to Bankruptcy Rule 9019.<sup>2</sup>

1.57. **“Disallowed Claim”** shall mean (i) a Claim or any portion thereof, that has been disallowed by a Final Order of the Bankruptcy Court; (ii) a Claim that has been listed in the Schedules at zero or as contingent, disputed, or unliquidated and as to which no proof of Claim has been timely filed pursuant to the Bankruptcy Code, any Final Order of the Court, or other applicable law; or (iii) a Claim that has not been listed in the Schedules and as to which no proof

---

<sup>2</sup> An amended DIP Lender Settlement Order has been submitted to the Court as of the filing of the Plan, but not yet signed that contains minor corrections. On confirmation, if the amended Order has been signed, it shall be substituted as Exhibit 4 for the currently attached Order.



1 of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to the  
2 Bankruptcy Code, any Final Order of the Court, or other applicable law.

3 1.58. **“Disclosure Statement”** shall mean the disclosure statement in support of the  
4 Plan, in the form approved by the Bankruptcy Court, disseminated by the Proponent to the  
5 holders of Claims against the Debtor in order to provide to such persons adequate information in  
6 accordance with section 1125 of the Bankruptcy Code, as such disclosure statement may be  
7 modified, amended or supplemented from time to time.

8 1.59. **“Disputed Claim”** shall mean any Claim or portion of a Claim as to which an  
9 objection to the allowance thereof has been interposed (whether as a separate objection to claim  
10 or in connection with an adversary proceeding) as of the Effective Date or any later deadline  
11 fixed under the Plan or by order of the Bankruptcy Court, which objection has not been  
12 withdrawn or determined by Final Order. To the extent an objection relates to the allowance of  
13 only a part of a Claim, such Claim shall be a Disputed Claim only to the extent of the objection.

14 1.60. **“Disputed Claims Amount”** shall mean the aggregate amount of Disputed Claims  
15 that are fixed, absolute – and neither contingent nor unliquidated. For purposes of calculating  
16 distributions of Cash under the Plan, the amount of each Disputed Claim shall be based upon the  
17 lower of the face amount of such Creditor’s Disputed Claim (or the disputed portion thereof) as  
18 set forth in the Creditor’s filed proof of Claim, or the amount estimated by the Court for  
19 distribution and/or allowance purposes.

20 1.61. **“Disputed Secured Claim”** shall mean that portion of a Secured Claim for which  
21 there is a dispute as to whether the claim is secured by a valid, perfected and enforceable Lien  
22 that is not subject to avoidance under bankruptcy or non-bankruptcy law.

23 1.62. **“Disputed Secured Creditors”** shall mean the Creditors holding Disputed  
24 Secured Claims in Classes 3, 5, 6, 7, 8, 9, 10, and 11.

25 1.63. **“Disputed Secured Creditors’ Post-Effective Date Lien”** shall mean the lien  
26 being created in this Plan in favor of the Disputed Secured Creditors, which lien will be in second  
27 position (behind only the Lien of Richard Zacky Trust) on the \$3.5M Creditor Note and the  
28 proceeds therefrom; such lien shall be fully perfected on the Effective Date without the need for



any additional filings or perfection documents.

1.64. **“Dreisbach”** shall mean Dreisbach Enterprises, Inc.

1.65. **“Effective Date”** shall mean the first Business Day on which each of the conditions specified in Article VIII of the Plan has been satisfied or duly waived.

1.66. **“Estate”** shall mean the bankruptcy estate of the Debtor pursuant to Bankruptcy Code section 541.

1.67. **“Estate Assets”** shall mean all remaining Estate property as of the Effective Date under section 541 of the Bankruptcy Code, including all property, assets, equitable or legal rights or interests, contract rights, benefits, causes of action, claims, or any other thing tangible or intangible, of any kind whatsoever, owned or held by or on behalf of the Debtor in which the Debtor has any right, title or interest to the full extent provided under section 541 of the Bankruptcy Code including, without limitation, Available Cash, the Secured Sale Notes and Avoidance Actions.

1.68. **“Exculpated Parties”** shall have the meaning assigned to it in Article 9.5 of this Plan.

1.69. **“Executory Contracts”** shall mean executory contracts and unexpired leases within the meaning of Bankruptcy Code section 365.

1.70. **“Final Order”** shall mean an order or judgment of the Bankruptcy Court or other court of competent jurisdiction (i) which has not been reversed, stayed, modified or amended, (ii) as to which the time to or the right to appeal or seek reconsideration, review, rehearing, or certiorari has expired or been waived (without regard to whether the time to seek relief from a judgment under Bankruptcy Rule 9024 has expired), and (iii) as to which no appeal or petition for reconsideration, review, rehearing, or certiorari is pending.

1.71. **“Interest”** shall mean the rights of the Debtor’s Members, each as the holder of an equity security as defined in Section 101(16) of the Bankruptcy Code.

1.72. **“Interest Holder”** shall mean, individually, each of the Debtor’s Members, or their successors and assigns.

///

1.73. **“Lien”** shall mean a charge against or interest in property to secure payment of a debt or performance of an obligation.

1.74. **“Lien of Richard Zacky Trust”** shall mean the lien held by the Richard Zacky Trust on the Prepetition Richard Zacky Trust Collateral.

1.75. **“Lillian Entities”** shall mean Lillian Zacky, individually, as trustee of the Robert D. Zacky and Lillian D. Zacky Trust U/D/T dated 7/26/88, and as trustee of the Lillian D. Zacky Trust U/D/T dated 7/26/88; Scott Zacky; 7915 Deep Creek LLC; 20115 Del Oro Road, Apple Valley, LLC; 18606 Lords Road, Helendale, LLC; and the Samuel, LLC.

1.76. **“Lillian Zacky Trust”** shall mean the Lillian D. Zacky Trust dated July 26, 1988, which provided \$3,000,000 in financing to the Debtor prior to the bankruptcy filing, which was secured by real estate owned by the Debtor.

1.77. **“Liquidating Debtor”** shall mean the Debtor as reorganized and reconstituted on and after the Effective Date.

1.78. **“Net Available Cash”** shall mean the aggregate amount of all Available Cash held by the Liquidating Debtor after the payment of (or appropriate reserve for) all senior obligations under the Bankruptcy Code Distribution Priorities, including but not limited to Allowed Administrative Claims, Allowed Priority Tax Claims, and net of amounts reserved for Disputed Claims, Post-Confirmation Professional fees and Plan Expenses.

1.79. **“Notice of Effective Date”** shall mean the notice filed and served by the Proponent on all parties-in-interest within seven (7) days of the Effective Date of the Plan.

1.80. **“Official Actions”** shall mean actions taken by the Exculpated Parties in their official capacities in the Chapter 11 Case after the Petition Date through the Confirmation Date. It does not include actions solely in their personal capacities as Creditors of the Debtor with respect to the pursuit and allowance or payment of such Creditors’ claims.

1.81. **“Operating Agreement”** shall mean the operating agreement together all amendments duly approved by the Debtor that is in effect as of the Confirmation Date under California Law.

///

1.82. **“Order” or “Bankruptcy Order”** shall mean an order entered by the Court in this Chapter 11 Case.

1.83. **“Permitted Liens”** shall mean those holders of Liens set forth in Section 1.1(mm) of the DIP Lender APA.

1.84. **“Petition Date”** shall mean October 8, 2012, which is the date when the Debtor filed its Chapter 11 Case.

1.85. **“Plan”** shall mean this chapter 11 plan of liquidation and any exhibits and schedules hereto and any documents incorporated herein by reference, as the same may from time to time be amended or modified as and to the extent permitted herein or by the Bankruptcy Code.

1.86. **“Plan Administrator”** shall mean initially Mr. Hank M. Spacone, whose curriculum vitae is set forth at Exhibit 5 hereto and who shall file a further statement setting forth his qualifications and affiliations, including a disclosure of any potential connections or conflicts of interest, pursuant to Bankruptcy Code section 1129(a)(5)(A)(i) not less than ten days prior to the last day to object to Confirmation. The Plan Administrator is a panel Chapter 7 Trustee and has served as a Chapter 11 Trustee in the Eastern District of California and in the Northern District of California, as well as the liquidating agent in multiple Chapter 11 cases pursuant to confirmed plans. The Plan Administrator both resides in and has his principal offices located in the Eastern District of California (Sacramento Division). In the event that a successor is appointed, “Plan Administrator” shall mean the Successor Plan Administrator.

1.87. **“Plan Administrator Compensation Cap”** shall mean: (a) from appointment through the date that the first one million dollars (\$1,000,000) in Cash is distributed by the Plan Administrator to Creditors Subject to Plan Administrator Cap, the Plan Administrator shall not receive any compensation for hourly fees billed in excess of \$53,520; (b) for distributions by the Plan Administrator in excess of first one million dollars (\$1,000,000) to Creditors Subject to the Plan Administrator Cap, the Plan Administrator may be paid his or her hourly fees billed up to three percent (3%) of the Cash distributed; but (c) no percentage of payments or distributions shall be included in the Plan Administrator Compensation Cap for any sums distributed by the Plan Administrator to Creditors Excluded from Plan Administrator Cap. This Plan Administrator

Cap is subject to modification pursuant to Articles 6.6 and 6.8.

1.88. **“Plan Administrator Distribution Process”** shall mean the creation and maintenance of the database to manage Creditor claims in the Chapter 11 Case, to create the reports and data required to make distributions to creditors as appropriate under the Plan, to print, sign and mail any and all checks for such distributions to Creditors, and to handle any returned checks and updates to the creditor data base as required. The Plan Administrator Distribution Process does not include the drafting of motions to obtain approvals from the Court in connection with the Plan Administrator Distribution Process (e.g. claim objection motions, motions to approve distributions, etc.).

1.89. **“Plan Expenses”** shall mean, subject to the limitations contained elsewhere in the Plan, including but not limited to Article 6.20 of the Plan, all actual and necessary costs and expenses incurred after the Effective Date in connection with the administration of the Plan, including, but not limited to, (i) costs, expenses and legal fees incurred related to filing and prosecuting objections to Claims, (ii) the costs, expenses and legal fees incurred to collect the Secured Sale Notes, including, but not limited to, attorneys’ fees, accounting fees, expert witness fees, consultants’ fees, and all costs relating to obtaining and distributing such recoveries, incurred by the Liquidating Debtor, (iii) the costs and expenses of administration of the Liquidating Debtor, including without limitation the fees and costs of the Plan Administrator; and (iv) all fees payable pursuant to section 1930 of Title 28 of the United States Code.

1.90. **“Plan Injunction” shall mean the injunction granted on Confirmation as set forth in Article 9.3 of the Plan.**

1.91. **“Post-Confirmation Budget”** shall mean the budget for Plan Expenses the Liquidating Debtor projects on the Effective Date to be necessary and appropriate, in the exercise of its business judgment and as approved by the Committee, to carry out the provisions of this Plan. A copy of the Post Confirmation Budget is attached hereto as **Exhibit 6**. The Post-Confirmation Budget may be modified with the consent of the Post-Confirmation Committee and/or with Court Approval pursuant to Article 6.20.

///

1.92. **“Post-Confirmation Committee”** shall mean the Committee Members who elect to remain as members of the Post-Confirmation Committee on the Effective Date.

1.93. **“Post-Confirmation Motion and Opportunity for Hearing”** shall mean the procedures to be utilized after the Effective Date by any party seeking approval from the Court respecting matters requiring approval under this Plan which procedures are more fully described in Article 6.39 herein.

1.94. **“Post-Confirmation Professional Contingent Fees”** shall mean attorney fees owed by the Estate for Post-Confirmation Professional fees incurred and payable to such professional for any approved contingent fee amount due based on a recovery in an affirmative claim against a Third Party or a benefit to the Estate obtained by reducing or eliminating a Claim against the Estate.

1.95. **“Post-Confirmation Professionals”** shall mean any professionals retained by the Plan Administrator or the Committee pursuant to Plan including but not limited to pursuant to Article 6.38.1 after the Effective Date, including any Professionals deemed to have been retained pursuant to the terms of this Plan that were previously retained by the Debtor or the Committee prior to the Effective Date.

1.96. **“Post-Confirmation Service List”** shall mean a service list comprised of names and email addresses for all members of the Committee as of the Effective Date, the Office of the United States Trustee, counsel for the Liquidating Debtor, the Plan Administrator, counsel for the Post-Confirmation Committee, and any other creditor or party in interest that files with the Court a request for post confirmation notice after the Effective Date and serves it on all parties on the Post Confirmation Service List.

1.97. **“Prepetition Richard Zacky Trust Collateral”** shall mean that certain real property commonly known as 16485 19<sup>th</sup> Avenue, Lemoore, California (Kings County APN 024-170-020) and that certain property referred to as the “Hanford 57” located in Hanford, California (Kings County APN 028-030-032), as it may be transferred to the proceeds from the \$3.5M Creditor Note pursuant to the DIP Lender Settlement Order.

///

1.98. **“Priority Claims”** shall mean such Claims that are entitled to priority under the Bankruptcy Code that are not Administrative Claims, Secured Claims, and/or Unsecured Claims.

1.99. **“Priority Employee Benefit Claim”** shall mean that portion of an Allowed Claim that is unsecured and that is entitled to priority under section 507(a)(5) of the Bankruptcy Code.

1.100. **“Priority Employee Claim”** shall mean that portion of an Allowed Claim that is unsecured and that is entitled to priority under section 507(a)(4) of the Bankruptcy Code.

1.101. **“Priority Tax Claim”** shall mean that portion of a Tax Claim, if any, entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

1.102. **“Pro Rata” or “Pro Rata Share”** shall mean, with respect to distributions on account of Allowed Claims, in the same ratio of an Allowed Claim in a particular Class to the aggregate of all Allowed Claims in that Class.

1.103. **“Professional Fees”** shall mean all amounts allowed and awarded by the Bankruptcy Court for compensation for services rendered and reimbursement of expenses incurred by Professionals pursuant to sections 330(a) and 503(b) of the Bankruptcy Code.

1.104. **“Professionals”** shall mean those attorneys, accountants and other financial advisors employed by the Debtor or Committee (pursuant to section 327 328 or 1102 of the Bankruptcy Code) in the Chapter 11 Case and to be compensated for services rendered and reimbursed for expenses incurred pursuant to sections 330(a) and 503(b) of the Bankruptcy Code.

1.105. **“Proponent”** shall mean the Debtor.

1.106. **“Rejected Contract(s)”** shall mean those Executory Contracts which are rejected by the Debtor pursuant to section 365 or 1123(b)(2) of the Bankruptcy Code.

1.107. **“Rejection Claim”** shall mean any Allowed Claim under Bankruptcy Code section 502(g) that arises under Bankruptcy Code section 365(g)(1) in favor of the non-debtor party to any Executory Contract that is rejected by the Debtor pursuant to Bankruptcy Code sections 365(a) or 1123(b)(2).

1.108. **“Rejection Claim Bar Date”** shall mean the earlier of (a) the date that is thirty (30) days after the Effective Date as set forth in the Notice of Effective Date; and the Confirmation Order shall contain notice of the consequences of a failure to timely file such proof

of such Rejection Claims; (b) such other date established by the Bankruptcy Court by which entities asserting a Rejection Claim against the Debtor must have filed a proof of Claim; or (c) on the one hundred twentieth (120<sup>th</sup>) day after the Confirmation Date.

1.109. **“Reserved Claims”** shall mean the amounts necessary, or reserved, to pay (i) Administrative Claims, (ii) Priority Tax Claims, (iii) Allowed Claims (iv) allowed contingency fees of contingency fee counsel engaged by the Debtor, the Committee, the Post-Confirmation Committee and/or the Liquidating Debtor, (v) Plan Expenses in accordance with the Post-Confirmation Budget, or (vi) Court-approved settlements.

1.110. **“Reserved Claims Pool”** shall mean the amounts which shall be funded on or after the Effective Date pursuant to Article 6.12 of this Plan for the purpose of holding as reserves the amounts of Administrative Claims (including amounts due for Professional Fees) which have not become Allowed Claims.

1.111. **“Reserved Claims Pool Account”** shall mean the bank account established by the Liquidating Debtor into which the Plan Administrator shall deposit the amounts which constitute the Reserved Claims Pool.

1.112. **“Richard and Sharon Zacky Entities”** shall mean insiders other than the Lillian Entities including but not limited to Integrated Grain & Milling, Inc., AB Ag Service Inc., American Huntsman, LLC, Big Feather Ranch, LLC, Lucky Wishbone, LLC, ZF Enterprises LLC, Sharon Zacky Wilensky individually and as trustee of the Sharon Zacky Wilensky Irrevocable Trust Dated 11/26/2007, Richard Zacky individually and as trustee of and including the following trusts: the Richard Zacky Trust, the Barbara Jean Zacky Irrevocable Trust Dated 12/30/06, and the Survivor’s Trust of the Albert and Beverly Zacky Trust Dated 2/10/88,

1.113. **“Richard Zacky Trust”** shall mean collectively Richard Zacky Trustee of the Richard N. Zacky Irrevocable Trust Dated 11/25/2007 and Richard N. Zacky Irrevocable Trust Dated 11/25/2007.

1.114. **“Sale Procedures Order”** shall mean the Order entered on November 20, 2012 (Docket No. 323) which set forth the process by which the Debtor marketed and sold substantially all of the assets of the Debtor during the case.



1.115. **“Schedules”** shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor with the Bankruptcy Court pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as amended from time to time.

1.116. **“Secured Sale Notes”** shall mean the \$6.4M 503(b)(9) Note and the \$3.5M Creditor Note.

1.117. **“Secured Claim”** shall mean a Claim secured by a Lien on property of the Debtor, or the Estate, or secured by an amount subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of such Lien or right of setoff as determined under sections 506(a) or 1129(b) of the Bankruptcy Code, as applicable.

1.118. **“Senior VP of Restructuring”** shall mean Mr. Sean Harding.

1.119. **“Settled 503(b)(9) Claims”** shall mean the 503(b)(9) Claims for which the Claimant has agreed to settle its 503(b)(9) Claim pursuant to the DIP Lender Settlement Order, which Claimant has accepted such treatment within the time frame described in the treatment of Class 14 herein.

1.120. **“Sole Manager”** shall mean Keith Cooper, or such other person who is appointed pursuant to the terms of the Operating Agreement prior to the Effective Date.

1.121. **“Successor Plan Administrator”** shall mean the successor Plan Administrator appointed pursuant to Article 6.32 of the Plan.

1.122. **“Third Parties”** shall mean any person or entity that is not the Debtor.

1.123. **“Unliquidated Claim”** shall mean any Claim for which a proof of Claim has been filed with the Bankruptcy Court but was not filed in a sum certain, and which Claim has not been estimated, fixed or liquidated by the Bankruptcy Court at a sum certain as of the Effective Date.

1.124. **“Unsecured Claim”** shall mean any Claim that is neither secured nor entitled to priority or administrative status under sections 507 or 503, respectively, of the Bankruptcy Code.

1.125. **“U.S. Trustee Fees”** shall mean all fees payable under 28 U.S.C. §1930.

1.126. **“Western Milling”** shall mean Western Milling, LLC.

1.127. **“Zacky Farms Sale”** shall mean the sale of substantially all of the Debtor’s assets to the DIP Lender as set forth in the DIP Lender APA and the Zacky Farms Sale Order.



1.128. **“Zacky Farms Sale Order”** shall mean the Order (Docket No. 1079) entered on February 21, 2013, which is attached as Exhibit 7 and incorporated herein by this reference.

## ARTICLE II

### CLASSIFICATION OF CLAIMS AND INTERESTS

2.1. **Criterion of Class.** The following is a designation of Classes of Claims under the Plan. Administrative Claims and Priority Tax Claims have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim is classified in a particular Class only to the extent that (i) the Claim qualifies within the description of that Class, and is classified in a different Class to the extent that the remainder of the Claim qualifies within the description of that different Class, and (ii) the Claim, or any portion or Allowed amount of such Claim, is an Allowed Claim in that Class and has not been paid, released or otherwise satisfied prior to the Effective Date. In the event of a controversy as to whether (a) any Class of Claims is impaired, or (b) any Class of Claims is properly designated, the Bankruptcy Court shall, after notice and a hearing, determine such controversy pursuant to applicable provisions of the Bankruptcy Code and Bankruptcy Rule 3013.

2.2. **Classes of Claims and Interests.** All Claims and Interests are divided into the following Classes, which Classes shall be mutually exclusive:

2.3. **Class 1 Claims.** Class 1 shall consist of the Secured Claims of the DIP Lender.

2.4. **Class 2 Claims.** Class 2 shall consist of the Secured Claim of Western Milling.

2.5. **Class 3 Claims.** Class 3 shall consist of the Secured Claim of Dreisbach.

2.6. **Class 4 Claims.** Class 4 shall consist of the Secured Claim of the Lillian Zacky Trust.

2.7. **Class 5 Claims.** Class 5 shall consist of the Secured Claim of Office Max North America.

2.8. **Class 6 Claims.** Class 6 shall consist of the Secured Claim of Dave Dodge Service, Inc.

2.9. **Class 7 Claims.** Class 7 shall consist of the Secured Claim of B&B Quality Food Providers.

2.10. **Class 8 Claims.** Class 8 shall consist of the Secured Claim of Wei Chan DDS.

2.11. **Class 9 Claims.** Class 9 shall consist of the Secured Claim of the Idaho Avenue Land Company.

2.12. **Class 10 Claims.** Class 10 shall consist of the Secured Claim of USA Petroleum Corporation

2.13. **Class 11 Claims.** Class 11 shall consist of the Secured Claim of GFC LLC.

2.14. **Class 12 Claims.** Class 12 shall consist of the Secured Claim of the Richard Zacky Trust.

2.15. **Class 13 Claims.** Class 13 shall consist of the Secured Claims of holders of Permitted Liens.

2.16. **Class 14 Claims.** Class 14 shall consist of the Settled 503(b)(9) Claims.

2.17. **Class 15 Claims.** Class 15 shall consist of General Unsecured Claims.

2.18. **Class 16 Interests.** Class 16 shall consist of the Interests held by the Debtor's Members.

### ARTICLE III

#### TREATMENT OF UNCLASSIFIED CLAIMS

3.1. **Administrative Claims.** Each Allowed Administrative Claim, unless the holder of such Claim has agreed to a different treatment such as holders of Settled 503(b)(9) Claims, shall be paid in full by the DIP Lender in the ordinary course of business under the terms of the DIP Lender APA and the DIP Lender Settlement Order; but if DIP Lender fails to make such payments, and if collection efforts by the Plan Administrator against the DIP Lender do not prompt such payment, and subject to the condition contained in Article 6.20, such payment(s) shall be made by the Liquidating Debtor from Available Cash or the Reserved Claims Pool Account (as applicable) on the latest of: (a) the Effective Date, or as soon thereafter as practicable; (b) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable; (c) the tenth Business Day after such Claim is Allowed, or as soon thereafter as practicable; (d) such date as the holder of such Claim and the Liquidating Debtor may agree; (e) the date that the condition contained in Article 6.20 is satisfied. Satisfaction of an Administrative

Claim by the Plan Administrator shall not relieve the DIP Lender from its obligations with respect to such claim, and the Debtor shall be subrogated to the rights of any Claimant against any party, including but not limited to the DIP Lender or its assignee, whose Administrative Claim is or has previously been paid by the Debtor.

3.2. **Administrative Claim Bar Date.** All requests for payment of Administrative Claims, other than Claims for Professional Fees, must be filed by the Administrative Claim Bar Date or the holders thereof shall be forever barred from asserting such Administrative Claims against the Debtor or the Liquidating Debtor or from sharing in any distribution under the Plan.

3.3. **Claims for Professional Fees.** Each party seeking an award by the Bankruptcy Court of Professional Fees: (a) must file its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date on or before the Administrative Claims Bar Date; and (b) if the Bankruptcy Court grants such an award, each such party will be paid in full in Cash by the Liquidating Debtor in such amounts as are allowed by the Bankruptcy Court as soon thereafter as practicable. All final applications for allowance and disbursement of Professional Fees must be in compliance with all of the terms and provisions of any applicable order of the Bankruptcy Court, including the Confirmation Order.

3.4. **Priority Tax Claims.** Each Allowed Priority Tax Claim and any other tax claims, up to the aggregate amount of \$500,000, have been assumed and shall be paid by the DIP Lender under the terms of the DIP Lender APA. If the DIP Lender fails to pay such Allowed Priority Tax Claims, and if collection efforts by the Plan Administrator against the DIP Lender do not prompt such payment, any amounts unpaid by the DIP Lender, unless the holder of such Claim has agreed to a different treatment, shall, subject to the satisfaction of the condition in Article 6.20 be paid by the Liquidating Debtor from Available Cash or the Reserved Claims Pool Account (as applicable) under the Bankruptcy Code Distribution Priorities deferred cash payments to the extent permitted by section 1129(a)(9) of the Bankruptcy Code with interest on the unpaid portion of such Claim at the rate established by applicable nonbankruptcy law as of the calendar month in which the Plan is confirmed, or at such other rate as may be agreed upon between the Liquidating Debtor and the appropriate governmental unit, provided that the

Liquidating Debtor may prepay any or all such Claims at any time, without premium or penalty. Satisfaction of a Priority Tax Claim by the Plan Administrator shall not relieve the DIP Lender from its obligations with respect to such claim, and the Debtor shall be subrogated to the rights of any Claimant against any party, including but not limited to the DIP Lender or its assignee, whose Priority Tax Claim is or has previously been paid by the Debtor. Allowed Priority Tax Claims that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

3.5. **Priority Employee Claims.** All Allowed Priority Employee Claims were assumed by the DIP Lender under the terms of the DIP Lender APA and have previously been paid or satisfied by such assumption. If the DIP Lender fails to pay such Priority Employee Claims, and if collection efforts by the Plan Administrator against the DIP Lender do not prompt such payment, Any amounts unpaid by the DIP Lender, subject to the satisfaction of the condition in Article 6.20, shall be paid by the Liquidating Debtor from Available Cash or the Reserved Claims Pool Account (as applicable) under the Bankruptcy Code Distribution Priorities as soon as practicable after the Effective Date. Satisfaction of a Priority Employee Claim by the Plan Administrator shall not relieve the DIP Lender from its obligations with respect to such claim. and the Debtor shall be subrogated to the rights of any Claimant against any party, including but not limited to the DIP Lender or its assignee, whose Priority Employee Claim is or has previously been paid by the Debtor. Allowed Priority Employee Claims that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

3.6. **Other Priority Claims.** The Debtor does not know of or believe that any other Priority Claims exist, but if there are such Claims, and upon allowance, such Allowed Priority Claims shall, subject to the satisfaction of the condition in Article 6.20, be paid in accordance with the Bankruptcy Code Distribution Priorities from Net Available Cash as soon as practicable after the date such Claim becomes an Allowed Priority Claim. Allowed Priority Claims that have

become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

#### ARTICLE IV

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

4.1. **Class 1 Claims (DIP Lender).** The Class 1 Creditor shall be treated pursuant to the terms provided in the DIP Lender Settlement Order, the Zacky Farms Sale Order and the Zacky Farms APA, which are incorporated by reference into this Plan treatment of Class 1 Claims as if restated fully herein. No distributions shall be made to the DIP Lender except as required to return carved-out funds pursuant to the terms of the DIP Lender Settlement Order. The DIP Lender shall remain fully responsible for and liable for all obligations and amounts due the Debtor and/or any Creditors under the DIP Lender Settlement Order, the Zacky Farms Sale Order, the \$6.4M 503(b)(9) Note and the \$3.5M Creditor Note as well as any other documentation executed in connection with these orders and documents. To the extent that the DIP Lender's Liens have not been previously expunged from the Estate Assets, any and all remaining Liens of the DIP Lender on any Estate Assets shall be invalid, void and expunged on the Effective Date.

4.2. **Class 2 Claims (Western Milling).** Western Milling's secured claim shall be treated pursuant to the terms provided in the DIP Lender Settlement Order. Subject to Western Milling's rights and interests provided in the DIP Lender Settlement Order (and particularly Paragraph 14), to the extent that Western Milling's Liens have not been previously expunged from the Estate Assets, any and all remaining Liens of Western Milling on any Estate Assets shall be deemed invalid, void and expunged from all the Estate Assets on the Effective Date. Western Milling shall be entitled to receive distributions on account of its Settled 503(b)(9) Claim and its unsecured claim as part of distributions to Class 14 and 15 Claimants, respectfully, and as set forth in the DIP Lender Settlement Order. Allowed Claims in Class 2 that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-

petition, or otherwise shall not receive any distributions under the Plan.

4.3. **Class 3 Claims (Dreisbach).** Dreisbach's Disputed Secured Claim shall receive one of the following two alternate treatments: (a) If the Debtor has obtained an Order prior to the Confirmation Date estimating or determining the amount of Dreisbach's Disputed Secured Claim at zero (\$-0-) for Plan Confirmation purposes, no further distributions shall be made to Dreisbach on account of its Disputed Secured Claim and the disputed Lien of Dreisbach on any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on the Effective Date. Or, (b) If an Order referenced in Article 4.3(a) has not been obtained by the Confirmation Date, Dreisbach's Disputed Secured Claim shall be secured after the Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid from the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan documents or at such other rate as determined by the Court at the Confirmation Hearing. Unless objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to Dreisbach's Disputed Secured Claim and may resolve said claim pursuant to the Plan. Allowed Claims in Class 3 that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

4.4. **Class 4 Claims (Lillian Zacky Trust).** The Class 4 Creditor shall receive no Plan distributions pursuant to the terms of the DIP Lender Settlement Order and the Zacky Farms Sale Order. To the extent that the Lillian Zacky Trust's Liens have not been previously expunged from the Estate Assets, any and all remaining Liens of the Lillian Zacky Trust on any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on the Effective Date.

4.5. **Class 5 Claims (Office Max North America).** Office Max North America's Disputed Secured Claim shall receive one of the following two alternate treatments: (a) If the Debtor has obtained an Order prior to the Confirmation Date estimating or determining the

1 amount of Office Max North America's Disputed Secured Claim at zero (\$-0-) for Plan  
 2 Confirmation purposes, no further distributions shall be made to Office Max North America on  
 3 account of its Disputed Secured Claim and the disputed Lien of Office Max North America on  
 4 any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on  
 5 the Effective Date. Or, (b) If an Order referenced in Article 4.5(a) has not been obtained by the  
 6 Confirmation Date, Office Max North America's Disputed Secured Claim shall be secured after  
 7 the Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid  
 8 from the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim  
 9 becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note  
 10 Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan  
 11 documents or at such other rate as determined by the Court at the Confirmation Hearing. Unless  
 12 objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to  
 13 Office Max North America's Disputed Secured Claim and may resolve said claim pursuant to the  
 14 Plan. Allowed Claims in Class 5 that have become unenforceable against the Debtor and  
 15 property of the Debtor after the date of the filing of the petition by satisfaction, release, creation  
 16 of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any  
 17 distributions under the Plan.

18 4.6. **Class 6 Claims (Dave Dodge Service, Inc.).** Dave Dodge Service, Inc.'s  
 19 Disputed Secured Claim shall receive one of the following two alternate treatments: (a) If the  
 20 Debtor has obtained an Order prior to the Confirmation Date estimating or determining the  
 21 amount of Dave Dodge Service, Inc.'s Disputed Secured Claim at zero (\$-0-) for Plan  
 22 Confirmation purposes, no further distributions shall be made to Dave Dodge Service, Inc. on  
 23 account of its Disputed Secured Claim and the disputed Lien of Dave Dodge Service, Inc. on any  
 24 Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on the  
 25 Effective Date. Or, (b) If an Order referenced in Article 4.6(a) has not been obtained by the  
 26 Confirmation Date, Dave Dodge Service, Inc.'s Disputed Secured Claim shall be secured after the  
 27 Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid from  
 28 the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim



1 becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note  
2 Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan  
3 documents or at such other rate as determined by the Court at the Confirmation Hearing. Unless  
4 objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to  
5 Dave Dodge Service Inc.'s Disputed Secured Claim and may resolve said claim pursuant to the  
6 Plan. Allowed Claims in Class 6 that have become unenforceable against the Debtor and  
7 property of the Debtor after the date of the filing of the petition by satisfaction, release, creation  
8 of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any  
9 distributions under the Plan.

10 4.7. **Class 7 Claims (B&B Quality Food Providers).** B&B Quality Food Providers'  
11 Disputed Secured Claim shall receive one of the following two alternate treatments: (a) If the  
12 Debtor has obtained an Order prior to the Confirmation Date estimating or determining the  
13 amount of B&B Quality Food Providers' Disputed Secured Claim at zero (\$-0-) for Plan  
14 Confirmation purposes, no further distributions shall be made to B&B Quality Food Providers' on  
15 account of its Disputed Secured Claim and the disputed Lien of B&B Quality Food Providers' on  
16 any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on  
17 the Effective Date. Or, (b) If an Order referenced in Article 4.7(a) has not been obtained by the  
18 Confirmation Date, B&B Quality Food Providers' Disputed Secured Claim shall be secured after  
19 the Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid  
20 from the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim  
21 becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note  
22 Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan  
23 documents or at such other rate as determined by the Court at the Confirmation Hearing. Unless  
24 objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to  
25 B&B Quality Food Providers' Disputed Secured Claim and may resolve said claim pursuant to  
26 the Plan. Allowed Claims in Class 7 that have become unenforceable against the Debtor and  
27 property of the Debtor after the date of the filing of the petition by satisfaction, release, creation  
28 of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any



distributions under the Plan.

4.8. **Class 8 Claims (Wei Chan DDS).** Wei Chan DDS' Disputed Secured Claim shall receive one of the following two alternate treatments: (a) If the Debtor has obtained an Order prior to the Confirmation Date estimating or determining the amount of Wei Chan DDS' Disputed Secured Claim at zero (\$-0-) for Plan Confirmation purposes, no further distributions shall be made to Wei Chan DDS on account of its Disputed Secured Claim and the disputed Lien of Wei Chan DDS on any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on the Effective Date. Or, (b) If an Order referenced in Article 4.8(a) has not been obtained by the Confirmation Date, Wei Chan DDS' Disputed Secured Claim shall be secured after the Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid from the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan documents or at such other rate as determined by the Court at the Confirmation Hearing Unless objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to Wei Chan DDS's Disputed Secured Claim and may resolve said claim pursuant to the Plan. Allowed Claims in Class 8 that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

4.9. **Class 9 Claims (Idaho Avenue Land Company).** The Disputed Secured Claim of Idaho Avenue Land Company shall receive one of the following two alternate treatments: (a) If the Debtor has obtained an Order prior to the Confirmation Date estimating or determining the amount of Idaho Avenue Land Company's Disputed Secured Claim at zero (\$-0-) for Plan Confirmation purposes, no further distributions shall be made to Idaho Avenue Land Company on account of its Disputed Secured Claim and the disputed Lien of Idaho Avenue Land Company on any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on the Effective Date. Or, (b) If an Order referenced in Article 4.9(a) has not been obtained by the

Confirmation Date, Idaho Avenue Land Company's Disputed Secured Claim shall be secured after the Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid from the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan documents or at such other rate as determined by the Court at the Confirmation Hearing. Unless objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to Idaho Avenue Land Company's Disputed Secured Claim and may resolve said claim pursuant to the Plan. Allowed Claims in Class 9 that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

4.10. **Class 10 Claims (USA Petroleum Corporation).** The Disputed Secured Claim of USA Petroleum Corporation shall receive one of the following two alternate treatments: (a) If the Debtor has obtained an Order prior to the Confirmation Date estimating or determining the amount of USA Petroleum Corporation's Disputed Secured Claim at zero (\$-0-) for Plan Confirmation purposes, no further distributions shall be made to USA Petroleum Corporation on account of its Disputed Secured Claim and the disputed Lien of USA Petroleum Corporation on any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on the Effective Date. Or, (b) If an Order referenced in Article 4.10(a) has not been obtained by the Confirmation Date, USA Petroleum Corporation's Disputed Secured Claim shall be secured after the Effective Date by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid from the proceeds of the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim becomes an Allowed Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note Payment Date. Interest shall also be paid concurrently in accordance with the underlying loan documents or at such other rate as determined by the Court at the Confirmation Hearing. Unless objected to or resolved prior to the Confirmation Date, the Plan Administrator shall object to USA Petroleum Corporation's Disputed Secured Claim and may resolve said claim pursuant to

1 the Plan. Allowed Claims in Class 10 that have become unenforceable against the Debtor and  
2 property of the Debtor after the date of the filing of the petition by satisfaction, release, creation  
3 of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any  
4 distributions under the Plan.

5 4.11. **Class 11 Claims (GFC LLC).** The Disputed Secured Claim of GFC LLC shall  
6 receive one of the following two alternate treatments: (a) If the Debtor has obtained an Order  
7 prior to the Confirmation Date estimating or determining the amount of GFC LLC's Disputed  
8 Secured Claim at zero (\$-0-) for Plan Confirmation purposes, no further distributions shall be  
9 made to GFC LLC on account of its Disputed Secured Claim and the disputed Lien of GFC LLC  
10 on any Estate Assets shall be deemed invalid, void and expunged from the all the Estate Assets on  
11 the Effective Date. Or, (b) If an Order referenced in Article 4.11(a) has not been obtained by the  
12 Confirmation Date, GFC LLC's Disputed Secured Claim shall be secured after the Effective Date  
13 by a Disputed Secured Creditors' Post-Effective Date Lien and shall be paid from the proceeds of  
14 the \$3.5M Creditor Note on the later of (i) when its Disputed Secured Claim becomes an Allowed  
15 Secured Claim and (ii) ninety (90) days after the \$3.5M Creditor Note Payment Date. Interest  
16 shall also be paid concurrently in accordance with the underlying loan documents or at such other  
17 rate as determined by the Court at the Confirmation Hearing. Unless objected to or resolved prior  
18 to the Confirmation Date, the Plan Administrator shall object to GFC LLC's Disputed Secured  
19 Claim and may resolve said claim pursuant to the Plan. Allowed Claims in Class 11 that have  
20 become unenforceable against the Debtor and property of the Debtor after the date of the filing of  
21 the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-  
22 petition, or otherwise shall not receive any distributions under the Plan.

23 4.12. **Class 12 Claim (Richard Zacky Trust).** The Richard Zacky Trust's Disputed  
24 Secured Claim shall remain secured by the Lien of Richard Zacky Trust until such time as said  
25 claim is either Allowed or disallowed. The Committee disputes the Lien of Richard Zacky Trust,  
26 and such dispute shall be resolved prior to or after the Effective Date. To the extent it becomes  
27 an Allowed Claim, the Class 12 Claim shall be paid as soon as practicable from the proceeds of  
28 the \$3.5M Creditor Note on the later of (a) when the Richard Zacky Trust's Disputed Secured

1 Claim becomes an Allowed Secured Claim, or (b) ninety (90) days after the \$3.5M Creditor Note  
 2 Payment Date (collectively (a-b) above, the “Richard Zacky Trust Payment Date”. To the extent  
 3 allowed, interest shall be also be paid through the Richard Zacky Trust Payment Date in  
 4 accordance with the underlying loan documents or at such other rate as determined by the Court  
 5 at the Confirmation Hearing on the Richard Zacky Payment Date. The Plan Administrator shall  
 6 have standing on the Effective Date to litigate or settle or otherwise resolve any and all disputes  
 7 regarding the Class 12 Creditor’s Disputed Secured Claim in accordance with the Plan. Allowed  
 8 Claims in Class 12 that have become unenforceable against the Debtor and property of the Debtor  
 9 after the date of the filing of the petition by satisfaction, release, creation of a defense, including  
 10 any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

11 4.13. **Class 13 Claims (Holders of Permitted Liens).** Class 13 consists of Creditors  
 12 whose secured claims remain on the assets transferred to the DIP Lender pursuant to the Zacky  
 13 Farms Sale documents and sections 1.1(mm) and 2.1 of the DIP Lender APA and shall be  
 14 satisfied by the DIP Lender. No distributions shall be made to Class 13 Creditors under the Plan.  
 15 Satisfaction of a Claim secured by a Permitted Lien by the Debtor or the Plan Administrator shall  
 16 not relieve the DIP Lender or its assignee from their respective obligations with respect to such  
 17 claim and the Debtor shall be subrogated to the rights of any such Claimant against any party,  
 18 including but not limited to the DIP Lender or its assignee.

19 4.14. **Class 14 Claims (Settled 503(b)(9) Claims).** 503(b)(9) Claims became Settled  
 20 503(b)(9) Claims by a Claimant’s executing and returning the 503(b)(9) Settlement Election on or  
 21 prior to April 8, 2013, or as later allowed by the Debtor, or otherwise approved by the Court. All  
 22 Allowed Settled 503(b)(9) Claims shall be paid from the proceeds of the 503(b)(9) Note. Such  
 23 payment shall be made on or as soon as practicable after August 26, 2013. For purposes of  
 24 clarity, and without further order of the Bankruptcy Court or filing of any other claim, a holder of  
 25 Settled 503(b)(9) Claim **may file** a general unsecured claim for the difference between the  
 26 holder’s Settled 503(b)(9) Claim and its 503(b)(9) Claim **on or before the Confirmation Date**  
 27 and such amount shall share in Class 15 distributions. Allowed Claims in Class 14 that have  
 28 become unenforceable against the Debtor and property of the Debtor after the date of the filing of

the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

4.15. **Class 15 Claims (General Unsecured Creditors).** Class 15 Creditors shall be paid from Estate Assets to the extent Net Available Cash exists after the payment of or reserve for all senior claims under the Bankruptcy Code Distribution Priorities in accordance with the provisions of this Plan. Prior to the use of any proceeds from the \$3.5M Creditor Note to pay senior obligations under the Bankruptcy Code Distribution Priorities, the Plan Administrator shall obtain Post-Confirmation Committee or Court approval pursuant to the provisions of Article 6.20. All payments shall be made on any principal amounts due, and then on interest, if applicable, at the rate of 7% per annum compounded annually. Allowed general Unsecured Claims that have become unenforceable against the Debtor and property of the Debtor after the date of the filing of the petition by satisfaction, release, creation of a defense, including any setoffs that arose post-petition, or otherwise shall not receive any distributions under the Plan.

4.16. **Class 16 Interests (Debtor's Members).** The Debtor's Members shall retain their Interests Post-Confirmation, but the Operating Agreement shall be deemed amended to eliminate any power or right to effect management of the Debtor Post-Confirmation, except to the extent authorized pursuant to other provisions in this Plan. No Member or group of Members shall have any authority to perform any act on behalf of the Debtor, except to the extent authorized pursuant to other provisions in this Plan. No distributions to the Debtor's Members shall be made until all Allowed Claims and/or obligations to the Claimants' in Classes 1-15 are fully satisfied.

## ARTICLE V

### UNIMPAIRED AND IMPAIRED CLASSES

All Classes are impaired under this Plan.

## ARTICLE VI

### MEANS FOR IMPLEMENTATION OF THE PLAN

The Plan shall be implemented on the Effective Date. In addition to the provisions set forth elsewhere in this Plan regarding means of execution, the following shall constitute the principal means for implementation of the Plan.

1           **6.1. Effective Date Transactions.** Without limiting the generality of the foregoing,  
2 and without altering or amending the terms of the Plan in any manner, on (or, where appropriate,  
3 after) the Effective Date, the following actions shall occur:

4                   6.1.1. The transactions contemplated under the Plan shall be consummated;

5                   6.1.2. The Liquidating Debtor shall fund the Reserved Claims Pool Account with  
6 the funds necessary to establish the Reserved Claims Pool;

7                   6.1.3. The Liquidating Debtor shall reserve such funds as are necessary to fund  
8 all anticipated Plan Expenses;

9                   6.1.4. The Plan Administrator shall assume his or her responsibilities under the  
10 Plan, unless the Confirmation Order changes the effective date of the Plan Administrator  
11 appointment.

12           **6.2. Revesting of Estate Assets.** Upon the Effective Date, the Liquidating Debtor  
13 shall be vested with all right, title and interest in the Estate Assets free and clear of all Claims and  
14 Liens, other than as specifically provided in this Plan. The Liquidating Debtor, through the Plan  
15 Administrator, is authorized to bring any and all claims against Third Parties, including the  
16 Richard and Lillian Zacky Entities, including Avoidance Actions, claims for breaches of fiduciary  
17 duties, recharacterization, subordination and all other claims and causes of action.

18           **6.3. Amendment of Operating Agreement.** Upon the Effective Date, or such other  
19 time as is set forth in the Confirmation Order or other separate Order, the Debtor's Operating  
20 Agreement shall be deemed amended to replace the Sole Manager with the Plan Administrator,  
21 and the Sole Manager shall be relieved of his responsibilities for the Debtor. The Liquidating  
22 Debtor, as represented by the Plan Administrator, shall be authorized to execute such other  
23 documents as are necessary and appropriate to carry out the provisions of this Plan, without the  
24 necessity of filing such documents with the Bankruptcy Court. In the event the Liquidating  
25 Debtor seeks and obtains the assistance of the Sole Manager, the Debtor's or the Committee's  
26 Professionals after Confirmation, regarding, *inter alia*, the Debtor's dissolution or the Chapter 11  
27 Case, the Liquidating Debtor shall pay for such assistance at the regular hourly rates of the Sole  
28 Manager, the Debtor's or the Committee's Professionals.

6.4. **Management of Liquidating Debtor by Plan Administrator.** Subject to the oversight and consent of the Post-Confirmation Committee which is required for certain Plan Administrator actions or decisions that are set forth in, *inter alia*, Article 6.20, on and after the Effective Date, the Plan Administrator shall be responsible for the implementation of the Plan, including with respect to the management, control and operation of the Liquidating Debtor. Nothing in this section shall interfere with, impede or affect in any manner the police and regulatory powers of the United States Department of Agriculture with respect to the Liquidating Debtor after the termination of the Plan Injunction, or with respect to any third party at any time.

6.5. **Plan Administrator Base Compensation.** The Plan Administrator shall be paid in the ordinary course of business his or her hourly charges, based on an hourly rate not to exceed \$300 per hour, but such payments may not exceed the Plan Administrator Compensation Cap. The Plan Administrator may also pay his or her reasonable out of pocket expenses in the ordinary course of business, but such payments may not exceed the amounts allocated for such expenses in the Liquidating Debtor's Liquidation Budget. The Plan Administrator shall provide copies of reasonably detailed invoices to the Post-Confirmation Committee for reasonableness review no fewer than ten (10) days prior to payment of said invoices.

6.6. **Plan Administrator Added Compensation For Collection Activities Related to \$6.4M 503(b)(9) Note.** If collection efforts to recover the \$6.4M 503(b)(9) Note are required, the Plan Administrator may be compensated for the specific hourly fees charged for such collection activities in excess of the Plan Administrator Compensation Cap as follows. (a) the Plan Administrator Compensation Cap shall be deemed modified to include distributions made by the Plan Administrator to the holders of 503(b)(9) Claims in the definition of Creditors Subject to Plan Administrator's Contingency Fee, but (b) The Plan Administrator shall seek to have all the Plan Administrator's fees and costs of collecting on the \$6.4M 503(b)(9) Note recovered from and paid by the DIP Lender before the Plan Administrator pays such additional fees from the proceeds of the \$6.4M 503(b)(9) Note, (c) the amount of the modification of the Plan Administrator Compensation Cap will not exceed the Plan Administrator's actual fees billed in the collection efforts respecting the \$6.4M 503(b)(9) Note, and (d) No payments under this



paragraph may be made absent Post-Confirmation Committee or Court approval of such additional fees in excess of the Plan Administrator Compensation Cap.

6.7. **Plan Administrator Fee Application.** The Plan Administrator shall not be required to provide detailed time records if the compensation sought does not exceed \$53,200. Upon completion of all duties and concurrent with a Post-Confirmation Motion and Opportunity for Hearing seeking closure of the Chapter 11 Case, to the extent that the Plan Administrator seeks fees and expenses in excess of \$53,200, the Plan Administrator shall file a final fee application seeking Court approval of all compensation and expenses paid to the Plan Administrator.

6.8. **Court Modification of Plan Administrator Cap.** Notwithstanding anything to the contrary in this Plan, upon the appointment of a Successor Plan Administrator, or upon the occurrence of extraordinary events that would make the Plan Administrator Cap improvident due to unforeseen circumstances, the Court, after Notice and Opportunity for Hearing, may approve a reasonable adjustment to Plan Administrator Compensation Cap as is reasonably necessary to carry out the purpose and intent of this Plan.

6.9. **Continued Business of Liquidating Debtor.** On and after the Effective Date, the Liquidating Debtor shall continue to engage in its wind-down operations and may use, acquire, dispose of and/or abandon Estate Assets without supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules, except as set forth in this Plan. The Liquidating Debtor will not continue or engage in the conduct of any trade or business, except to the limited extent necessary to accomplish the liquidation and distribution of the Estate Assets.

6.10. **Secured Sale Notes.** Except as otherwise limited in this Plan, on and after the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating Debtor, acting through the Plan Administrator, shall enforce the Secured Sale Notes with all powers and authority of a debtor in possession or trustee under the Bankruptcy Code. If collection actions are necessary, the Plan Administrator shall seek to assess the DIP Lender with the costs, fees and expenses of such collection actions.



6.11. **Other DIP Lender Obligations.** Except as otherwise limited in this Plan, on and after the Effective Date, pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidating Debtor, acting through the Plan Administrator, shall enforce all the obligations of the DIP Lender pursuant to the DIP Lender Settlement Order, the DIP Lender APA and all other documents executed or prepared in connection with the DIP Lender Settlement or the Zacky Farms Sale, including but not limited to the obligations of the DIP Lender under such documents to pay certain: Administrative Claims, Cure Obligations, Priority Claims, and certain assumed Unsecured Claims, such as unsecured employee obligations. If collection actions are necessary, the Plan Administrator shall seek to assess the DIP Lender will and the costs, fees and expenses of such collection actions.

6.12. **Settlement of Claims and Defenses.** Subject to the restrictions in Article 6.20, the Plan Administrator may investigate claims, objections or defenses and may assert, settle, abandon, or enforce any such affirmative claims, objections or defenses without supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules.

6.13. **Bankruptcy Rule 2004.** In the course of any ongoing investigations, the Plan Administrator shall have the right post-confirmation to utilize Bankruptcy Rule 2004 examinations, including the issuance of subpoenas, and such future examinations and subpoenas shall be deemed to have been approved and authorized by the Plan and may be issued without further Order of the Court.

6.14. **Standing.** To the extent any litigation is already pending on the Effective Date, the Liquidating Debtor as successor to the Debtor and the Committee may continue the prosecution of such litigation and such litigation shall be authorized without further order of the Court. Without limiting the foregoing, the Plan Administrator, acting on behalf of the Liquidating Debtor, shall accede to and become the holder of all rights in and to any confidentiality agreements, joint defense agreements, and privilege agreements, as well as rights pursuant to attorney-client privilege, attorney work product and any other or similar doctrine, of the Debtor and the Committee (to the extent applicable to any litigation commenced by the

Committee on behalf of the Estate prior to the Effective Date). Any proceeds received from or on account of such litigation shall constitute Estate Assets and shall vest entirely in the Liquidating Debtor. Without limiting the foregoing, the Plan Administrator shall be authorized to pursue any and all claims of the Estate against Third Parties which are preserved and vested in the Liquidating Debtor.

**6.15. Avoidance Actions.** Except as previously released under the DIP Lender Settlement Order, or other Order of the Court, on and after the Effective Date, the Liquidating Debtor, acting through the Plan Administrator, shall retain and may enforce the Avoidance Actions with all powers and authority of a debtor in possession or trustee under the Bankruptcy Code. The Plan Administrator may investigate Avoidance Actions and may assert, settle or enforce any such claims or defenses pursuant to the Plan. To the extent any Avoidance Actions are already pending on the Effective Date, the Liquidating Debtor as successor to the Debtor and through the Plan Administrator, may continue the prosecution of such Avoidance Actions. Any proceeds received from or on account of the Avoidance Actions shall constitute Estate Assets and shall vest entirely in the Liquidating Debtor. Without limiting the generality of the foregoing, any and all of the Estate's claims and causes of action against the Richard and Sharon Zacky Entities shall vest in and be retained by the Liquidating Debtor on the Effective Date, including but not limited to claims for the recovery of fraudulent and preferential transfers, subordination and recharacterization of claims, and breaches of and aiding and abetting in the breaches of fiduciary duties, included but not limited to those set forth in the Complaint (as defined in the Disclosure Statement) and the Debtor's Schedules. The Plan Administrator is hereby granted and shall have the standing and authority to pursue any and all such claims, and 1123(b)(3) of the Bankruptcy Code shall be deemed satisfied.

**6.16. Claims Reserve Account.** On or as soon as practical following the Effective Date, the Claims Reserve Account shall be opened by the Plan Administrator and held by the Liquidating Debtor and funded by all Cash not deposited in the Reserved Claims Pool Account, which funds (minus all Plan Expenses) shall be held for the benefit of Creditors entitled to distributions under this Plan. Unless otherwise provided in the Confirmation Order, the Claims

1 Reserve Account shall be invested by the Plan Administrator in a manner consistent with the  
2 objectives of section 345(a) of the Bankruptcy Code. All duties and obligations associated with  
3 the maintenance of the Claims Reserve Account, including but not limited to, any fees, taxes, tax  
4 reporting or filings with any governmental authority, shall be the sole responsibility of the Plan  
5 Administrator.

6 6.17. **Liquidating Debtor Liquidation Budget.** Upon the Effective Date, and to the  
7 extent that Net Available Cash exists, the Plan Administrator shall exercise his or her business  
8 judgment and reserve the estimated amount of all Plan Expenses and two years of United States  
9 Trustee fees and may reserve additional funds post confirmation based on information available at  
10 the time in the exercise of his or her business judgment.

11 6.18. **Limitation of Liability of Plan Administrator.** The Plan Administrator and his  
12 or her attorneys, accountants, consultants, employees, agents and assignees, heirs, successors, and  
13 assigns, shall have no liability for any error of judgment made in good faith other than as a result  
14 of gross negligence or willful misconduct. The Plan Administrator shall not be liable for any  
15 action taken or omitted in good faith and believed by him or her to be authorized within the  
16 discretion or rights or powers conferred upon him or her by this Plan. Other than utilizing Plan  
17 Administrator's office and computer resources in the conduct of the Plan Administrator  
18 Distribution Process, no provisions of this Plan shall require the Plan Administrator to expend or  
19 risk his or her own funds or otherwise incur personal financial liability in the performance of any  
20 of duties under this Plan or in the exercise of any of the Plan Administrator's rights and powers.  
21 The Liquidating Debtor shall indemnify and hold the Plan Administrator harmless from and  
22 against any damages, costs, claims and other liabilities incurred in connection with his or her  
23 respective duties and responsibilities hereunder, other than those damages, costs, claims and other  
24 liabilities that result from such party's gross negligence or willful misconduct Notwithstanding  
25 the above, nothing in this paragraph shall shield a Post-Confirmation Professional employed by  
26 the Plan Administrator from injuries caused by his, her or its negligence in the performance of  
27 his, her or its duties.

28 ///

6.19. **Termination of the Committee and Creation of Post-Confirmation**

**Committee.** The Committee shall cease to exist on the Effective Date. The Post-Confirmation Committee shall come into existence on the Effective Date, and its members shall be the same as currently serving on the Committee. Additionally, all bylaws, motions and agreements of the Committee shall become bylaws motions and agreements of the Post-Confirmation Committee. The Post-Confirmation Committee shall retain all rights and benefits given to the Committee under the Bankruptcy Code and applicable law, including, without limitation, qualified immunity. The Post-Confirmation Committee shall remain in existence until the earlier of (a) entry of a Final Decree, or (b) until all members have resigned. Any member may resign from the Post-Confirmation Committee by serving written notice to all members of the Post-Confirmation Committee and to the Plan Administrator. Such written notice may specify the date of resignation. The Plan shall amend the existing Committee bylaws to provide: (a) in the event that there is a tie vote on a motion presented to the Post-Confirmation Committee or other action of the Post-Confirmation Committee, the motion and/or action shall be decided based on the aggregate claim amounts of the voting members, and (b) to make the minimum number of Post-Confirmation Committee members one (1).

6.20. **Powers of Post Confirmation Committee:** The Post-Confirmation Committee may retain the Professionals of the Liquidating Debtor or retain their own Professionals in the Post-Confirmation Committee's discretion in accordance with Article 6.38.2, but payment for such Post-Confirmation Professionals fees and expenses shall be made solely from the proceeds of the \$3.5M Creditor Note and any amounts allocated for Committee Professionals in the DIP Lender Settlement Order, but not fully expended as of the Effective Date. At or prior to any Post-Confirmation Committee meeting as may be reasonably requested by the Post-Confirmation Committee, the Plan Administrator shall give the Post-Confirmation Committee reports regarding, *inter alia*, the status of the Secured Sale Notes and the Liquidating Debtor's budget to actual performance regarding the Post-Confirmation Budget. The Plan Administrator shall work with the Post-Confirmation Committee to schedule Post-Confirmation Committee meetings as needed. The Plan Administrator may also invite such other Professionals or persons as he or she

believes are appropriate to give reports to the Post-Confirmation Committee. As long as the Post-Confirmation Committee has one or more members remaining, the Plan Administrator may not take the following actions without the approval of the Post-Confirmation Committee, or if the Post-Confirmation Committee objects, approval of such action by the Bankruptcy Court:

6.20.1. Settle or otherwise resolve affirmative claims against and/or any objections to the Claims of any of the Richard and Sharon Zacky Entities;

6.20.2. Settle or otherwise resolve affirmative claims against Third Parties and/or Claims against the Debtor, where the net amount conceded in the settlement exceeds \$100,000.00;

6.20.3. Expend funds in excess of 10% of the budgeted items in the aggregate on the Post-Confirmation Budget or otherwise modify the Post-Confirmation Budget;

6.20.4. Hold Net Available Cash in excess of reasonably projected Plan Expenses that would otherwise be available for distribution to Class 14 or 15 Creditors for more than a six (6) month period without distributing such funds pursuant to the provisions of the Plan, unless such interim distribution would not be economic in light of the amount to be distributed in the business judgment of the Plan Administrator;

6.20.5. Use the Cash proceeds of the \$6.4M 503(b)(9) Note to pay any obligation or make a distribution under the Bankruptcy Code Distribution Priorities other than distributions to Class 14 Creditors;

6.20.6. Use the Cash proceeds of the \$3.5M Creditor Note to pay any obligation to Creditors under the Bankruptcy Code Distribution Priorities other than distributions to Class 15 Creditors and the Post-Confirmation Committee Professionals as set forth in the Plan; or

6.20.7. Seek a post-Confirmation modification of Plan with no materially adverse effect under Article 10.2.

**6.21. Material Default Under the Plan.** Failure to make any payment required to be made under the Plan by the Liquidating Debtor shall be considered a default under the Plan. If any default is not cured within 90 days after service of written notice of such default to the Liquidating Debtor, the Plan Administrator, counsel for the Plan Administrator, the United States

1 Trustee, the Post-Confirmation Committee and any counsel for the Post-Confirmation  
2 Committee, any affected Creditor, or any affected party in interest asserting such default may  
3 seek to enforce its rights under the Plan.

4 6.22. **Payment of Plan Expenses.** Subject to any restrictions in this Plan, Plan  
5 Expenses may be paid by the Liquidating Debtor.

6 6.23. **Distribution Procedures.** Distributions to holders of Allowed Secured or  
7 Unsecured Claims shall be made as soon as practicable as determined by the business judgment  
8 of the Plan Administrator based upon the amount of funds to be distributed relative to the  
9 administrative costs of making a distribution. Because both the timing and the amount of  
10 distributions to Unsecured Creditors are largely dependent on the proceeds from the \$3.5M  
11 Creditor Note, it is anticipated that a distribution to unsecured creditors will be made within three  
12 (3) months after collection of the \$3.5M Creditor Note, which is expected to be collected on or  
13 before February 26, 2015. No payments or distributions shall be made by the Liquidating Debtor  
14 on account of Disputed Claims unless and to the extent such Claims become Allowed Claims.  
15 The funds allocated to Disputed Claims will not be distributed, but will be held in the Claims  
16 Reserve Account by the Liquidating Debtor in accordance with this Plan pending resolution of  
17 such Disputed Claims. Except as otherwise agreed by the holder of a particular Claim, or as  
18 provided in this Plan, all amounts to be paid by the Liquidating Debtor under the Plan shall be  
19 distributed in such amounts and at such times as is reasonably prudent, in the form of interim  
20 and/or final distributions, with sufficient reserves established to satisfy the reserve requirements  
21 for senior obligations under the Bankruptcy Code Distribution Priorities and anticipated Plan  
22 Expenses, including anticipated amounts due the Plan Administrator. Unless otherwise provided  
23 in this Plan, all distributions to Creditors shall be: (i) in U.S. dollars by check, draft or warrant,  
24 drawn on a domestic bank, or by wire transfer from a domestic bank, and (ii) by first-class mail  
25 (or by other equivalent or superior means as appropriate).

26 6.24. **Resolution of Disputed Claims.** The Plan Administrator may file objections to  
27 Claims that have not been previously objected to as warranted. The Bankruptcy Court shall  
28 retain jurisdiction to hear and adjudicate the allowance or disallowance of Claims, as provided for

1 in Article X of this Plan. Settled Claims shall be deemed to be Allowed Claims in the amount  
2 compromised for purposes of this Plan. Under no circumstances will any distributions be made  
3 on account of Disallowed Claims.

4       **6.25. Reserve Provisions for Disputed Claims.** The Liquidating Debtor shall  
5 implement the following procedures with respect to the allocation and distribution of Cash held in  
6 reserve for the benefit of holders of Disputed Claims that may become Allowed Claims:

7               6.25.1. Cash respecting Disputed Claims shall not be distributed, but shall be  
8 withheld by the Liquidating Debtor, in an amount equal to the amount of the distributions that  
9 would otherwise be made to the holders of such Claims if such Claims had been Allowed Claims;

10              6.25.2. All holders of Allowed Claims shall be entitled to receive, if available,  
11 interim distributions under the Plan. No distributions may be made to the holders of Allowed  
12 Claims unless adequate reserves are established for the payment of Disputed Claims and  
13 sufficient funds are also reserved for senior obligations under the Bankruptcy Code Distribution  
14 Priorities and Plan Expenses;

15              6.25.3. For the purposes of effectuating the provisions of this Article, the  
16 Bankruptcy Court may estimate the amount of any contingent or unliquidated Claim pursuant to  
17 section 502(c) of the Bankruptcy Code, which provides, “There shall be estimated for the purpose  
18 of allowance under this section – (1) any contingent or unliquidated claim, the fixing or  
19 liquidation of which, as the case may be, would unduly delay the administration of the case; or (2)  
20 any right to payment arising from a right to an equitable remedy for breach of performance.” The  
21 amounts so fixed or liquidated by the Bankruptcy Court shall be deemed to be Allowed Claims  
22 for purposes of distribution under this Plan, or alternatively, until such time as the Claim becomes  
23 Allowed, the amount so fixed by the Bankruptcy Court shall serve as the basis to calculate the  
24 appropriate Disputed Claim reserve;

25              6.25.4. When a Disputed Claim becomes an Allowed Claim, there shall be  
26 distributed at the time of the next distribution to the holder of such Allowed Claim, in accordance  
27 with the provisions of this Plan, Cash equal to the holder’s Pro Rata Share of the Distributions  
28 that have previously been made on account of the Claims in the same class. The Plan



1 Administrator may agree to make a special catch up distribution in his or her sole discretion. In  
2 no event shall such holder be paid more than the amount that would otherwise have been paid to  
3 such holder if the Disputed Claim (or the Allowed portion of the Disputed Claim) had not been a  
4 Disputed Claim;

5 6.25.5. Interim distributions may be made from time to time to the holders of  
6 Allowed Claims prior to the resolution by Final Order or otherwise of all Disputed Claims,  
7 provided that, such distributions are otherwise consistent with the terms of this Plan and the  
8 aggregate amount of Cash to be distributed at such time is practicable in comparison to the  
9 anticipated costs of such interim distributions;

10 6.25.6. No holder of a Disputed Claim shall have any Claim against the Cash  
11 reserved with respect to such Claim until such Disputed Claim shall become an Allowed Claim.  
12 In no event shall any holder of any Disputed Claim be entitled to receive (under the Plan or  
13 otherwise) any payment (x) which is greater than the amount reserved for such Claim pursuant to  
14 this Article 6.24 or (y) except as otherwise permitted under this Plan. In no event shall the Plan  
15 Administrator have any responsibility or liability for any loss to or of any amount reserved under  
16 these provisions of this Plan unless the loss is caused by the Plan Administrator's gross  
17 negligence or willful misconduct; and

18 6.25.7. To the extent a Disputed Claim ultimately becomes an Allowed Claim in  
19 an amount less than the Disputed Claims Amount reserved for such Disputed Claim, then the  
20 resulting surplus of cash shall be made available for redistribution to other holders of Allowed  
21 Claims of like class until such time as each holder of an Allowed Claim has been paid the  
22 Allowed amount of its Claim.

23 6.26. **Allocation of Distributions.** Distributions to any holder of an Allowed Claim  
24 shall be allocated first to the principal amount of any such Allowed Claim, as determined for  
25 federal income tax purposes, and then, to the extent the consideration exceeds such amount, to the  
26 remainder of such Claim comprising interest, if any (but solely to the extent that interest is an  
27 allowable portion of such Allowed Claim). No interest of any kind or nature will be paid on any  
28 Allowed Claim until 100% of the principal amounts of all Allowed Claims are paid in full.



1           6.27. **Rounding.** Whenever any payment of a fraction of a cent would otherwise be  
2 called for the actual distribution shall reflect a rounding of such fraction down to the nearest cent.

3           6.28. **De Minimis Distributions.** Notwithstanding any other provision of this Plan,  
4 interim distributions of less than \$500.00 and a final distribution of less than \$50.00 need not be  
5 made by the Liquidating Debtor on account of any Allowed Claim, provided that, the amount of  
6 such de minimis distributions that would otherwise be made but for this provision shall be  
7 reserved as in the same manner as reserves for Disputed Claims in Article 6.24, and shall carry  
8 over until the next date of a distribution until the cumulative amount to which any holder of an  
9 Allowed Claim is entitled is more than \$500.00, at which time the cumulative amount of such  
10 distributions shall be paid to such holder of the subject Claim. Distributions that will not be made  
11 as of the date of a final distribution shall be treated as unclaimed funds as provided in Article 6.28  
12 of this Plan.

13           6.29. **Unclaimed Funds.** Notwithstanding any other provision of this Plan, at the point  
14 when the remaining funds in the Claims Reserve Account consist of an amount impracticable to  
15 distribute, the Plan Administrator may donate such Cash to a nonprofit organization or  
16 organizations in this judicial district that are exempt pursuant to section 501(c) of the Internal  
17 Revenue Code (Title 26 of the United States Code), or may lodge with the Bankruptcy Court such  
18 sums as unclaimed funds under 11 U.S.C. § 347, and the Court Clerk shall accept such funds  
19 notwithstanding that this case is a Chapter 11 case.

20           6.30. **Disputed Payments.** In the event of any dispute between and among Creditors as  
21 to the right of any entity to receive or retain any payment or distribution to be made to such entity  
22 under the Plan, the Liquidating Debtor may, in lieu of making such payment or distribution to  
23 such entity, instead hold such payment or distribution until the disposition thereof shall be  
24 determined by the Bankruptcy Court.

25           6.31. **Unclaimed Distributions.** Creditors have the obligation to file change of address  
26 forms with the Court and to serve such changes of address on the Plan Administrator and his or  
27 her counsel. If a Creditor fails to claim any distribution of Cash within 90 days from the date  
28 upon which a distribution is made, such Creditor shall be subject to having its claim excluded

1 from future distributions. The Plan Administrator may but is not required to file an omnibus  
2 Post-Confirmation Motion and Opportunity for Hearing seeking to exclude such Creditors from  
3 future distributions and shall serve such Creditors at: (a) the address for service of process for  
4 such Creditors as listed on the California Secretary of State web site, if any; (b) the addresses on  
5 Creditors' proofs of Claim, if any; (c) the addresses scheduled by the Debtor for such Creditors, if  
6 any; and (d) any addresses supplied by Creditors in the last change of address filed with the  
7 Court, if any. Upon Court approval of the subject Creditors' forfeiture, such Cash (including  
8 interest thereon) shall be made available for re-distribution to other holders of Allowed Claims of  
9 like Class. After disallowance such Creditors shall forfeit their rights thereto and shall have no  
10 claim whatsoever against the Liquidating Debtor or the Plan Administrator, as applicable, or any  
11 holder of an Allowed Claim to whom distributions are made under this Plan. If the Plan  
12 Administrator elects based on his or her business discretion that the cost of filing such a motion to  
13 exclude Creditors does not reasonably exceed the benefit to other Creditors from such a motion,  
14 the Plan Administrator may alternatively treat such returned distributions as unclaimed funds  
15 under Article 6.28.

16       **6.32. Successor Plan Administrator.** If the Plan Administrator resigns or dies, or is  
17 otherwise unable or unwilling to perform his or her duties under this Plan, the Post-Confirmation  
18 Committee shall name the Successor Plan Administrator, which appointment shall be subject to  
19 Court approval. The proposed Successor Plan Administrator shall be an existing or former  
20 Chapter 7 or Chapter 11 Trustee in the Eastern District of California and who either resides in or  
21 whose principal office location is within the Eastern District of California. If the Post-  
22 Confirmation Committee no longer exists, the Successor Plan Administrator shall be selected by  
23 the Creditor holding the largest undisputed Allowed Claim, after consultation with parties in  
24 interest, including the Office of the United States Trustee and other Unsecured Creditors and  
25 Interest Holders or their successors, as appropriate. Appointment of the Successor Plan  
26 Administrator shall also be subject to Court approval.

27       **6.33. Setoffs.** Nothing contained in this Plan shall constitute a waiver or release by the  
28 Debtor of any right of setoff or recoupment that the Debtor or the Liquidating Debtor may have

1 against any Creditor or Interest Holder.

2       **6.34. No Distributions on Late-Filed Claims.** Any Claim as to which a proof of Claim  
3 was first filed after the Bar Date or the Rejection Claim Bar Date, as applicable, shall be a  
4 Disallowed Claim, and no distribution shall be made to a holder of such a Claim, provided that, to  
5 the extent such Claim was listed in the Schedules (other than as contingent, disputed, or  
6 unliquidated), such Claim shall be treated as an Allowed Claim in the amount in which it was so  
7 listed, unless such scheduled Claim is reduced or eliminated by Court Order pursuant to a duly  
8 noticed Claim Objection. No motions to allow late filed claims may be filed by any Creditor after  
9 the Effective Date.

10       **6.35. No Distributions on Amended Claims Filed After the Effective Date.** An  
11 Amendment(s) to a proof of Claim or a scheduled Claim after the Effective Date shall be  
12 ineffective, and the Plan Administrator may either ignore such amendment(s) or may object to  
13 allowance of the Claim(s) as amended. No motions to allow the filing of an amended claims after  
14 the Effective Date may be filed by any Creditor, unless such motion is filed prior to the Effective  
15 Date.

16       **6.36. Withholding Taxes.** Pursuant to section 346(f) of the Bankruptcy Code, the  
17 Liquidating Debtor may but is not required to deduct any federal, state or local withholding taxes  
18 (“Withholding Tax”) from any Cash payments made with respect to Allowed Claims of the  
19 former employees of the Debtor, as appropriate. If the administrative burden of compliance with  
20 all Withholding Tax obligations is excessive in light of the assets available for distribution, the  
21 Plan Administrator may seek court approval for substituting the filing of 1099 forms in lieu of the  
22 Withholding Tax obligation. As to Claims of non-employees, no Withholding Taxes shall be  
23 required. Payment of taxes shall be the sole responsibility of the Creditor receiving the  
24 distribution, except to the extent that the Liquidating Debtor actually deducts Withholding Taxes  
25 from a distribution.

26       **6.37. Post-Effective Date Reports.** Following the Effective Date, the Liquidating  
27 Debtor shall prepare and submit to the Bankruptcy Court and the Office of the United States  
28 Trustee, post-confirmation reports for the Liquidating Debtor in the form suggested by the Office

of the United States Trustee for Region 17. The first post-confirmation report shall be due within thirty (30) days following the end of the first calendar quarter from the Effective Date and shall be filed on a quarterly basis thereafter within thirty (30) days after the end of each quarter, unless otherwise agreed by the Liquidating Debtor and the Office of the United States Trustee.

**6.38. Post-Effective Date Employment and Compensation of Professionals.**

6.38.1. Employment: After the Effective Date, the Plan Administrator or the Post-Confirmation Committee may retain any existing Professionals of the Debtor or the Committee without further employment agreements or orders, and such employments shall be deemed to continue on the Effective Date. Additionally, after the Effective Date, the Plan Administrator or the Post-Confirmation Committee may hire other professionals without the requirement that such professionals file employment applications for Bankruptcy Court approval of their employment, whether on an hourly, contingency fee or other basis, and without requirement that such professionals file applications for payment of post-Effective Date fees and expenses on an interim basis. Without limiting the generality of the foregoing, both the Plan Administrator and the Post-Confirmation Committee may employ the same counsel and such employment shall be authorized by this Plan.

6.38.2. Compensation:

(i) Litigation and Claims Objection Compensation:

All employment of Post-Confirmation Professionals asserting affirmative claims against Third Parties and/or bringing claims objections or defending against any other claims against the Estate shall be on a contingency fee arrangement, and notwithstanding anything above, any such employment is subject to approval by both the Plan Administrator and the Post-Confirmation Committee and, if not such approval is obtained by the Bankruptcy Court after notice and a hearing. All contingency fee arrangements shall be capped at three times the hourly rates charged. Unless the Plan Administrator obtains Court approval to replace a Professional(s) already handling contingent fee matters for the Estate, either for the Committee or the Debtor, the Plan Administrator shall continue such Professional(s) employment after the Effective Date on the same terms and conditions as previously approved without the need for any additional

approvals by the Committee, the Plan Administrator or the Bankruptcy Court.

(ii) Plan Administrator Distribution Process:

Except for actual out of pocket costs such as copying, mailing, bank charges and the like, any Post-Confirmation Professional Fees incurred in assisting the Plan Administrator to conduct the Plan Administrator Distribution Process shall be solely paid by the Plan Administrator out of the Plan Administrator Cap. The Plan Administrator shall not have any independent liability for any such Post-Confirmation Professional Fees.

(iii) Hourly Rate Employment:

Except as set forth above in the Litigation and Claims Objections Compensation section, and the Plan Administrator Distribution Process section, the Plan Administrator may compensate Post-Confirmation Professionals on an hourly rate and pay expenses without Court approval, but may not pay any Post-Confirmation Professional fees in excess of the Post-Confirmation Budget on a line item by line item basis without Post-Confirmation Committee or in the alternative Court approval of a modification of the Post-Confirmation Budget before such fees are anticipated to be incurred. *Nunc pro tunc* approval of a modification of the Post-Confirmation Budget may be obtained upon consent of the Plan Administrator and the Post-Confirmation Committee and, if no consent is granted, upon a motion filed within ninety (90) days of the commencement of the work that will exceed the Post-Confirmation Budget. Post-Confirmation Professionals employed by the Post-Confirmation Committee may not be compensated for any hourly fees and expenses that exceed the higher of \$50,000 or 25% of the amount actually billed for hourly rate counsel for the Plan Administrator without Plan Administrator or Court approval. *Nunc pro tunc* approval of a modification of compensation of the Post-Confirmation Committee Professionals may be obtained upon consent of the Plan Administrator and the Post-Confirmation Committee and, if no consent is granted, upon a motion filed within ninety (90) days of the commencement of the work that will exceed this limitation on compensation for Post-Confirmation Professionals. Notwithstanding, there shall be no limitation on compensation payable to the Post-Confirmation Committee Professionals for work related to the appeal of the DIP Lender Settlement Order and any other appeal related to the Debtor in which the Post-Confirmation Committee Professionals

are involved.

(iv) Modification of Post-Confirmation Professional Compensation Limitations:

Upon the occurrence of extraordinary events that would make the foregoing limitations on compensation to the Post-Confirmation Professionals improvident due to unforeseen circumstances, the Court may, after notice and a hearing, approve reasonable adjustments to the restrictions on such compensation set forth in this Article as are reasonably necessary to carry out the purpose and intent of this Plan.

**6.39. Procedures for Post-Confirmation Motion and Opportunity for Hearing.** A Post-Confirmation Motion and Opportunity for Hearing shall be served on the Post-Confirmation Service List and shall: (i) detail the requested relief; (ii) provide evidentiary support; and (iii) give any and all parties in interest fourteen (14) calendar days to file written opposition with the Court and to request a hearing. If no opposition is filed, the Court may act on the Post-Confirmation Motion and Opportunity for Hearing without hearing.

**6.40. Jurisdictional Limitations on Claims re Plan Implementation:** Any party in interest who believes that the conduct of the Plan Administrator, the Post-Confirmation Committee Members and/or the Post-Confirmation Professionals, is not consistent with the provisions of this Plan or believes that any claims exist against the Plan Administrator, the Post-Confirmation Committee Members and/or the Post-Confirmation Professionals for any conduct taken with the scope of their respective duties under the Plan, all such claims, rights, requests for relief, or enforcement of the Plan must be filed in and determined by the Bankruptcy Court. No concurrent jurisdiction shall exist for the determination or enforcement of any such rights under or arising under this Plan, or claims against the Plan Administrator, the Post-Confirmation Committee Members, and/or the Post-Confirmation Professionals, in any other state, federal, or foreign court.

**6.41. Destruction of Records.** After the Effective Date, the Plan Administrator may destroy all books and records of the Liquidating Debtor which the Plan Administrator deems in his or her sole discretion to be unnecessary to completing administration of the Liquidating

Debtor under this Plan. Nothing in this section shall interfere with, impede or affect in any manner the police and regulatory powers of the United States Department of Agriculture with respect to the Liquidating Debtor after the termination of the Plan Injunction, or with respect to any third party at any time.

6.42. **Dissolution of the Debtor.** Before filing the motion seeking approval of a final decree closing the case, the Plan Administrator may, but is not required to take the steps reasonably required to formally dissolve the Debtor under California Law, and shall have the power and authority to do so without the consent or endorsement of the Members. If such steps to dissolve the Debtor are not taken prior to the entry of the final decree closing this Case, entry of the final decree will serve to deem the remaining assets of the Debtor, including its existence under California law abandoned pursuant to the provisions of Article 6.43.

6.43. **Abandonment of Assets.** The Liquidating Debtor after notice and hearing may abandon any asset burdensome to the Liquidating Debtor or that is of inconsequential value and benefit to the Liquidating Debtor. To the extent that assets are abandoned, and notwithstanding anything to the contrary in this Plan, the Members shall administer such abandoned assets pursuant to the terms of the Operating Agreement as if the Plan had not been confirmed, excepting that the last amendment appointing Keith Cooper as the Sole Manager shall be deemed null and void. The Members shall comply with the Bankruptcy Code Distribution Priorities with respect to any proceeds from the liquidation of abandoned assets.

6.44. **Permanent Satisfaction.** The rights afforded in this Plan, and the treatment of all Claims and Interests set forth herein, shall be in full exchange for, and in complete satisfaction of, all Claims and Interests of any kind or nature whatsoever, whether known or unknown, matured or contingent, liquidated or unliquidated, existing, arising or accruing, whether or not yet due, prior to the Effective Date, including without limitation any Claims, or interest on Claims, accruing on or after the Petition Date, against the Debtor or any of the assets or property thereof, provided that such satisfaction does not affect any party's rights under the Plan. Nothing in this section shall interfere with, impede or affect in any manner the police and regulatory powers of the United States Department of Agriculture with respect to the Liquidating Debtor after the



6.45. **Final Decree.** When the Bankruptcy Case is fully administered, the Plan Administrator shall file a motion for the entry of a final decree closing the Chapter 11 Case pursuant to section 350 of the Bankruptcy Code. Concurrently with the motion for entry of final decree, the Plan Administrator shall also file a report with the Court and the Office of the United States Trustee that sets forth the distributions made by the Liquidating Debtor pursuant to the Plan. Upon approval of this Motion, the Plan Administrator will be discharged from all responsibilities and obligations under this Plan.

6.46. **Closing of Case.** If there are no pending matters in the Chapter 11 Case, the Plan Administrator may temporarily close the Chapter 11 Case and such closing will not constitute entry of a final decree under Article 6.45. The Plan Administrator may act while the case is closed to implement all the provisions of this Plan including making distributions. The Plan Administrator may reopen the Case to address any issue required, but shall in any event, reopen the Case to seek entry of the final decree in accordance with Article 6.45 when the Case has been fully administered.

6.47. **U.S. Trustee Fees.** The U.S. Trustee quarterly fees shall be budgeted for and paid by the Plan Administrator for each quarter (including any fraction thereof) unless the case is converted, dismissed, or closed. Upon closing of the case, no further U.S. Trustee fees shall be due, except for any calendar quarter during which the case may be reopened and stay open for at least three (3) consecutive months.

## EXECUTORY CONTRACTS

7.1. **Assumed Executory Contracts.** The only executory contracts assumed during the Bankruptcy Case were assumed and assigned as part of the Zacky Farms Sale. The DIP Lender and/or its assignee shall pay all obligations associated with such assumed and assigned executory contracts. Satisfaction of an Assumed Obligation by the Plan Administrator shall not relieve the DIP Lender and its assignee from their respective obligations with respect to such claim, and the Debtor shall be subrogated to the rights of any Claimant against any party,



1 including but not limited to the DIP Lender or its assignee, whose Assumed Obligation is or has  
2 been paid by the Debtor.

3 7.2. **Plan Rejection.** Upon the Confirmation Date, any and all Executory Contracts  
4 not previously assumed and assigned by the Debtor shall be rejected pursuant to the Confirmation  
5 Order.

6 7.3. **Rejection.** Nothing contained herein shall constitute a waiver by the Debtor or the  
7 Liquidating Debtor or a Creditor to such contracts of the right to contend that some or all of a  
8 Rejected Contract is not executory, or that it was not terminated earlier by agreement or operation  
9 of law. All Rejection Claims arising from the rejection of an Executory Contract pursuant to the  
10 Plan or otherwise must be filed by the Rejection Claim Bar Date. Any Rejection Claim not filed  
11 by the applicable Rejection Claims Bar Date shall be a Disallowed Claim and shall be forever  
12 barred as a Claim against the Debtor, the Liquidating Debtor, the Committee, the Post-  
13 Confirmation Committee, or any property of the Debtor and from sharing in any distribution  
14 under this Plan.

15 7.4. **Order Authorizing Rejection.** The Confirmation Order (or if set forth in a  
16 separate order from the Confirmation Order, the Assumption and Cure Order applicable to such  
17 Assumed Contract) shall constitute an order of the Bankruptcy Court approving (effective only  
18 upon the occurrence of the Confirmation Date) the rejection, pursuant to sections 365 and  
19 1123(b)(2) of the Bankruptcy Code of all Executory Contracts under this Article of the Plan. The  
20 contracts and leases under this Article 7 will be rejected only to the extent that any such contracts  
21 or leases constitute Executory Contracts.

## 22 **ARTICLE VIII**

### 23 **CONDITIONS PRECEDENT**

24 8.1. **Conditions to Confirmation.** Confirmation of this Plan is conditioned upon the  
25 entry of an order confirming the Plan in an acceptable form to the Debtor.

26 8.2. **Conditions to Effective Date.** At any time after entry of the Confirmation Order  
27 (and provided no stay is then in effect), the Proponent shall have the power and authority to cause  
28 the Plan to become effective by filing a Notice of Effective Date, which notice, if not previously

1 filed, shall be deemed to have been filed on the ninetieth (90) day after the Confirmation Date.

2 **ARTICLE IX**

3 **EFFECTS OF CONFIRMATION**

4 9.1. **Binding Effect of Plan.** The provisions of the confirmed Plan shall bind the  
5 Debtor, the Liquidating Debtor, the Committee, the Post-Confirmation Committee and any  
6 Creditor or Interest Holder, whether or not such Creditor or Interest Holder has filed a proof of  
7 Claim or Interest in the Chapter 11 Case, whether or not the Claim of such Creditor or the Interest  
8 of such Interest Holder is impaired under the Plan, and whether or not such Creditor or Interest  
9 Holder has accepted or rejected the Plan. All Claims and Debts shall be as fixed and adjusted  
10 pursuant to this Plan. Nothing in this section shall interfere with, impede or affect in any manner  
11 the police and regulatory powers of the United States Department of Agriculture with respect to  
12 the Liquidating Debtor after the termination of the Plan Injunction, or with respect to any third  
13 party at any time.

14 9.2. **Revesting of Property Free and Clear.** Upon the Effective Date, title to all  
15 Estate Assets, including but not limited to any and all affirmative claims against and/or any  
16 objections to the Claims of any of the Richard and Sharon Zacky Entities, shall vest in the  
17 Liquidating Debtor for the purposes contemplated under the Plan and section 1123(b)(3) shall be  
18 deemed satisfied in all respects. All Unsecured Claims against the Debtor or the Estate shall be  
19 of no further force or effect except with respect to the rights of holders of Allowed Claims to  
20 receive payments or distributions as set forth herein. Following the Effective Date, the  
21 Liquidating Debtor may use, acquire or dispose of any such property free of any restrictions  
22 imposed by the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules and without  
23 further approval of the Bankruptcy Court or notice to Creditors, except as may otherwise be  
24 required under the Plan or the Confirmation Order. Except as otherwise expressly provided in the  
25 Plan or Confirmation Order, all rights or causes of action are hereby preserved and retained for  
26 enforcement solely and exclusively by and at the discretion of the Liquidating Debtor. Nothing in  
27 this section shall interfere with, impede or affect in any manner the police and regulatory powers  
28 of the United States Department of Agriculture with respect to the Liquidating Debtor after the

1 termination of the Plan Injunction, or with respect to any third party at any time.

2 9.3. **Injunction.** Until all remaining Estate Assets of the Liquidating Debtor and the  
3 Estate are fully administered, and except as otherwise provided by the Plan, all entities who have  
4 held, hold or may hold Claims against or Interests in the Debtor or the Debtor's estate that arose  
5 prior to the Effective Date are enjoined from taking legal action against the Debtor or the  
6 Liquidating Debtor for the purpose of directly or indirectly collecting, recovering, or receiving  
7 payment or recovery with respect to any Claim or demand against the Debtor or the Liquidating  
8 Debtor.

9 9.4. **No Discharge.** Pursuant to 11 U.S.C. § 1141(d)(3), confirmation of this Plan shall  
10 not operate as a discharge of the Debtor.

11 9.5. **Limitation of Liability.** The Sole Member, the CRO, the Senior VP of  
12 Restructuring, the Committee Members, and, effective upon approval of such Professional's final  
13 fee applications in this Bankruptcy Case, the Debtor's and Committee's Professionals  
14 (collectively, the "Exculpated Parties"), will neither have nor incur any liability to any entity for  
15 any Official Actions in good faith taken or omitted to be taken in connection with or related to the  
16 Chapter 11 Case, the investigations of potential claims or the formulation, preparation,  
17 dissemination, implementation, Confirmation or consummation of the Plan, the Disclosure  
18 Statement, or any agreement created or entered into in connection with the Plan or incident to the  
19 Chapter 11 Case, provided that, the foregoing shall not exonerate any of the Exculpated Parties  
20 from any liability that results from an act or omission to the extent such act or omission is  
21 determined by Final Order to have constituted gross negligence or willful misconduct. In  
22 addition, notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no  
23 other party in interest, none of their respective agents, employees, representatives, financial  
24 advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right  
25 of action against any Exculpated Party for any Official Actions made in good faith from and after  
26 the Petition Date through the Confirmation Date in connection with, relating to or arising out of  
27 the Chapter 11 Case or the consideration, formulation, preparation, dissemination,  
28 implementation, Confirmation or consummation of the Plan, the Disclosure Statement, or any

transaction or document created or entered into, or any other act taken or omitted to be taken, in connection therewith, except for: (a) the liability of any Exculpated Party that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan, (b) the liability of any Exculpated Party that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct, and (c) actions taken by Exculpated Parties who are holders of a Claim and are taking actions in pursuit of the allowance or payment of such Claim.

9.6. **Preservation of USDA Police and Regulatory Powers.** Notwithstanding any provision to the contrary in the Plan, the Confirmation Order, any implementing Plan documents, and any other documents, nothing in the Plan, the Confirmation Order, any implementing Plan documents or any other document shall: (1) interfere with, affect or impede in any manner the police and regulatory powers of the United States Department of Agriculture (USDA) with respect to the Debtor, the Liquidating Debtor, non-debtors, and their successors and assigns; or (2) discharge any USDA claims that have arisen or may arise against the Debtor, the Liquidating Debtor, and their successors and assigns. The Bankruptcy Court may retain jurisdiction, but not exclusive jurisdiction, over USDA's claims and issues arising therefrom only to the extent allowed by applicable law.

## ARTICLE X

### RETENTION OF JURISDICTION

10.1. **Pre-Confirmation Modification:** The proponent may propose amendments or modifications of this Plan at any time prior to the Confirmation Date consistent with Rule 3019.

10.2. **Post-Confirmation Modification with no Materially Adverse Effect:** After the Confirmation Date, the Plan Administrator may, with approval of the Court but without notice and so long as it does not materially, adversely affect the interest of Creditors, modify this Plan or remedy any defect or omission or reconcile any inconsistency in the Plan in such a matter as may be necessary to carry out the purpose and intent of this Plan.

10.3. **Post-Confirmation Material Modification:** The Plan may be modified at any time after Confirmation and before substantial consummation, provided that this Plan, as modified, meets the requirements of Sections 1122 and 1123 of the Bankruptcy Code, and the Court, after notice and a hearing, confirms such Plan, as modified, under Section 1129 of the Bankruptcy Code, and the circumstances warrant such modification. The Plan Administrator shall be considered the Proponent for purposes of this section.

## ARTICLE XI

### RETENTION OF JURISDICTION

Except as provided herein, from and after the Confirmation Date, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, but not limited to, for the following purposes:

11.1. To hear and determine any and all objections to the allowance of a Claim, actions to equitably subordinate or recharacterize a Claim, or any controversy as to the classification of a Claim in a particular Class under the Plan;

11.2. To administer or enforce the Plan;

11.3. To liquidate any Disputed Claims;

11.4. To hear and determine any and all adversary proceedings, contested matters, claims objections, motions or applications pending on the Effective Date;

11.5. To hear and determine any and all applications by Professionals for an award of pre-Effective Date Professional Fees;

11.6. To interpret and/or enforce the provisions of the Plan, and the Plan Injunction and to determine any and all disputes arising under or regarding interpretation of the Plan, or any other agreement, document or instrument contemplated by the Plan, including, without limitation, and claims asserted against the Plan Administrator or against any Post-Confirmation Professionals or any claims asserted against the Committee or the Post-Confirmation Committee, and/or Professionals employed by the Committee or the Post-Confirmation Committee;

11.7. To enter and implement such orders as may be appropriate in the event Confirmation is for any reason stayed, reversed, revoked, modified or vacated;

11.8. To modify any provision of the Plan to the extent permitted by the Bankruptcy Code and to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

11.9. To approve applications for Bankruptcy Rule 2004 Examinations and issuance of subpoenas and any enforcement orders necessary;

11.10. To approve any compromise and settlements and/or abandonments of claims against Third Parties, and/or the abandonment of any Asset of the Estate, which the Plan requires approval, which the Plan Administrator in his or her sole discretion believes should be noticed to creditors, or which is the subject of an objection by the Post-Confirmation Committee;

11.11. To approve any sales of assets or claims pursuant to section 363 of the Bankruptcy Code, which the Plan Administrator in his or her sole discretion believes should be noticed to creditors;

11.12. To approve interim and/or final distributions to creditors, including the approval of any publication notices, which the Plan Administrator in his or her sole discretion believes should be noticed to creditors;

11.13. To issue an injunction or injunctions post-confirmation pursuant to Bankruptcy Code section 105 upon a proper showing;

11.14. To close the Chapter 11 Case when administration of the case has been completed and to enter a discharge of the Plan Administrator of his or her duties under the Plan;

11.15. To enter an order or orders reopening the Case as appropriate; and

11.16. To hear and determine any and all claims by and against the Richard and Sharon Zacky Entities.

## ARTICLE XII

### MISCELLANEOUS

12.1. **Severability of Plan Provisions.** In the event that, prior to the Confirmation Date, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the

1 original purpose of the term or provision held to be invalid, void or unenforceable, and such term  
2 or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding,  
3 alteration or interpretation, the remainder of the terms and provisions hereof shall remain in full  
4 force and effect and shall in no way be affected, impaired or invalidated by such holding,  
5 alteration or interpretation. The Confirmation Order shall constitute a judicial determination and  
6 shall provide that each term and provision hereof, as it may have been altered or interpreted in  
7 accordance with the foregoing, is valid and enforceable pursuant to its terms.

8       **12.2. Governing Law.** Except to the extent that the Bankruptcy Code or other federal  
9 law is applicable, the rights, duties and obligations arising under this Plan shall be governed by,  
10 and construed and enforced in accordance with, the laws of the State of California.

11       **12.3. Headings.** The headings contained in this Plan are for convenience of reference  
12 only and shall not limit or otherwise affect in any way the meaning or interpretation of this Plan.

13       **12.4. Language Interpretation.** In the interpretation of this Plan, unless the context  
14 otherwise requires, references in this Plan to the singular shall be construed to include references  
15 to the plural and vice versa; words importing the singular shall be deemed to import the plural and  
16 vice versa; words denoting gender shall include all genders; references to sections, schedules, and  
17 exhibits shall mean sections, schedules, and exhibits of and to this Plan; references to part  
18 includes the whole, except where the context clearly requires otherwise “or” has the inclusive  
19 meaning represented by the phrase “and/or,” and the words “hereof,” “herein,” “hereunder,” and  
20 similar terms in this Plan refer to this Plan as a whole and not to any particular provision of this  
21 Plan.

22       **12.5. Exhibits.** All exhibits attached to this Plan or the Disclosure Statement are, by  
23 this reference, hereby incorporated into the Plan. The final version of all exhibits to the Plan and  
24 the Disclosure Statement will be substantially in the forms attached hereto or thereto. The  
25 Proponent reserves the right to make non-substantive or minor changes and corrections to such  
26 exhibits in advance of the Confirmation Hearing. If any exhibits are changed or corrected, the  
27 replacement exhibits will be filed with the Bankruptcy Court prior to the commencement of the  
28 Confirmation Hearing.

1           **12.6. Exemption from Transfer Taxes.** The Debtor and the Liquidating Debtor shall  
2 have all the rights and benefits granted pursuant to Bankruptcy Code section 1146(c) under this  
3 Plan.

4           **12.7. Notices.** All notices required or permitted to be made in accordance with the Plan  
5 shall be in writing and shall be delivered personally or by nationally recognized overnight or  
6 next-day courier service, first class mail or via facsimile with electronic confirmation of receipt  
7 on the Post-Confirmation Service List.

8           **12.8. Computation of Time Periods.** In computing any period of time prescribed or  
9 allowed by the Plan, the day of the act, event, or default from which the designated period of time  
10 begins to run shall not be included. The last day of the period so computed shall be included  
11 unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a  
12 paper in the Bankruptcy Court, a day on which weather or other conditions have made the clerk's  
13 office inaccessible, in which event the period runs until the end of the next day which is not one  
14 of the aforementioned days.

15           **12.9. Defects, Omissions and Amendments.** The Proponent, with the approval of the  
16 Bankruptcy Court and without notice to all holders of Claims or Interests, insofar as it does not  
17 materially and adversely affect holders of Claims, may correct any defect, omission or  
18 inconsistency in the Plan in such manner and to such extent as may be necessary or desirable to  
19 expedite the execution of the Plan. The Plan may be altered or amended before or after  
20 Confirmation as provided in section 1127 of the Bankruptcy Code.

21           **12.10. Filing of Additional Documents.** The Proponent shall file with the Bankruptcy  
22 Court such agreements or other documents as may be necessary or appropriate to effectuate and  
23 further evidence the terms and conditions of the Plan.

24           **12.11. Successors and Assigns.** The rights, benefits and obligations of any entity named  
25 or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs,  
26 executors, administrators, successors and/or assigns of such entity. Nothing in this section shall  
27 interfere with, impede or affect in any manner the police and regulatory powers of the United  
28 States Department of Agriculture with respect to the Liquidating Debtor after the termination of



the Plan Injunction, or with respect to any third party at any time.

12.12. **Implementation.** Upon Confirmation, the Debtor and the Committee shall be authorized to take all steps and execute all documents necessary to effectuate the provisions contained in the Plan.

12.13. **Certain Actions.** By reason of entry of the Confirmation Order, prior to, on or after the Effective Date (as appropriate), all matters provided for under the Plan that would otherwise require approval of the Debtor's Members, Sole Manager, or officers of the Debtor, shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate), pursuant to the applicable California law without any requirement of further action by the Members or officers of the Debtor.

12.14. **Waiver of Fourteen (14) Day Stay.** The Proponent requests as part of the Confirmation Order a waiver from the Bankruptcy Court of the fourteen (14) day stay of Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the fourteen (14) day stay of Bankruptcy Rule 6004(h).

Dated: June 27, 2013

ZF IN LIQUIDATION, LLC FKA ZACKY FARMS, LLC

/s/ Sean M. Harding  
SEAN M. HARDING  
Its Senior Vice President of Restructuring

Dated: June 27, 2013

FELDERSTEIN FITZGERALD  
WILLOUGHBY & PASCUZZI LLP

/s/ Thomas A. Willoughby  
THOMAS A. WILLOUGHBY  
Attorneys for ZF in Liquidation, LLC fka Zacky Farms, LLC

# EXHIBIT 1

*EXECUTION VERSION*

**CREDITOR RECOVERY NOTE & SECURITY AGREEMENT**

\$3,500,000

Los Angeles, California  
February 26, 2013

FOR VALUE RECEIVED, ZACKY & SONS POULTRY, LLC, (the "Purchaser"), hereby unconditionally promises to pay, in the manner set forth below, for the benefit of ZACKY FARMS, LLC (the "Seller"), the principal sum of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$3,500,000.00) (as such amount may be increased or reduced from time to time pursuant to Sections 3 and 4 hereof (as applicable), the "Principal Sum"), plus interest on the Principal Sum as set forth in Section 1 hereof. All capitalized terms which are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of February 6, 2013, by and between The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988 and the Seller (the "Asset Purchase Agreement").

1. **Interest.** Interest on the unpaid principal amount of this Note & Security Agreement outstanding from time to time shall accrue from the date hereof to and including the date on which the outstanding principal and accrued and unpaid interest is paid in full, at the interest rate of four percent (4%) per annum, payable quarterly in arrears on each of (a) the date that is ninety (90) days from the date hereof, (b) the date that is one hundred eighty (180) days from the date hereof, (c) the date that is two hundred seventy (270) days from the date hereof, (d) the date that is three hundred sixty (360) days from the date hereof, (e) the date that is four hundred fifty (450) days from the date hereof, (f) the date that is five hundred forty (540) days from the date hereof, (g) the date that is six hundred thirty (630) days from the date hereof, and (h) the date that is the two (2) year anniversary of the date hereof. If any such date shall be a day other than a Business Day, then such interest shall be payable on the next Business Day after such date. All interest hereunder shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed.

2. **Repayment of Principal.** The Principal Sum shall become due and payable on the date that is the two (2) year anniversary of the date hereof (the "Maturity Date").

3. **Increase of Principal.** From time to time (upon the accrual, occurrence or payment of such amounts or obligations), the Principal Sum of this Note shall be automatically increased by an amount equal to all damages, obligations, liabilities, costs (including, without limitation, defense costs), fees (including, without limitation, legal fees) and other amounts paid or payable by the Seller or its bankruptcy estate on account of, related to or otherwise arising from either of the Asset Purchase Agreements (Lots 1 and 2) entered into between the Seller and Pitman (collectively, the "Pitman Purchase Agreements"), including, without limitation, any such damages, obligations, liabilities, costs, fees or other amounts resulting from any breach or alleged breach of the Pitman Purchase Agreements by the Seller.

4. **Prepayment.** The Purchaser at any time or from time to time may prepay, in cash, the unpaid principal amount of or interest on this Note & Security Agreement, in whole or in part, without penalty or premium. If Purchaser shall sell any Collateral (as defined below) with net proceeds of no less than \$50,000 other than in the ordinary course of business, the proceeds of such sale shall be applied to the prepayment of this Note & Security Agreement, to the extent there are any amounts outstanding hereunder. Any net amount of insurance proceeds received on account of the Collateral remaining after the cost of replacement of such Collateral shall be applied to the prepayment of this Note & Security Agreement, to the extent there are any amounts outstanding hereunder.

5. **Manner of Making Payments.** Payment of any amounts hereunder (whether principal or interest) shall be made to Seller in United States dollars by wire transfer of immediately available funds not later than 2:00 p.m., Los Angeles, California time, on the date such payment is due, to such bank account as Seller may from time to time designate in writing.

6. **Application of Payments.** All payments made hereunder shall be applied first to accrued and unpaid interest and then to the unpaid principal amount hereof (which shall reduce the then current Principal Sum).

7. **Pledge of Collateral.** As collateral security for the prompt and complete payment of the Purchaser's obligation under this Note & Security Agreement (whether at the stated maturity, by acceleration, or otherwise), the Purchaser hereby grants to Seller a continuing security interest in the collateral set forth on Schedule A hereto (the "Collateral"). The Purchaser hereby irrevocably authorizes Seller, at any time and from time to time, to file in any appropriate filing office, wherever located, any financing statement describing the Collateral that contains any information required by the Uniform Commercial Code of the applicable jurisdiction for the sufficiency or filing office acceptance of any financing statement. The Purchaser also authorizes Seller to take any and all actions required by law, equity, statute or otherwise to perfect and protect the security interest granted hereunder.

8. **Termination of Security Interest.** Upon the payment in full of any and all amounts payable in connection with or due under this Note & Security Agreement, the security interest granted to Seller in the Collateral shall terminate. Upon any such termination, Seller shall execute and deliver to the Purchaser such documents as the Purchaser will reasonably request to evidence such termination.

9. **Title to Collateral.** The Purchaser shall not affirmatively grant a security interest in or lien on the Collateral that is senior to or *pari passu* with the interests in Collateral provided by this Note & Security Agreement. The Purchaser will take all commercially reasonable efforts to defend the Collateral against all material claims or demands of all Persons (other than the Seller) claiming the Collateral or any interest therein.

10. **Name and Jurisdiction of Organization.** The Purchaser represents and warrants that the Purchaser's legal name is as set forth in the opening paragraph hereof, and that the Purchaser is organized and in good standing in the State of California. The Purchaser will not

change its name or jurisdiction of organization unless the Seller has been given at least ten (10) Business Days prior written notice thereof.

11. **Further Assurances; Attorney-in-Fact.**

11.1 **Further Assurances.** The Purchaser agrees that, from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Seller may reasonably request, in order to perfect and protect the security interest granted or purported to be granted hereby or to enable the Seller to exercise and enforce its rights and remedies hereunder with respect to any Collateral (but any failure to request or assure that the Purchaser execute and deliver such instrument or documents or to take such action will not affect or impair the validity, sufficiency or enforceability of this Note & Security Agreement and the security interest, regardless of whether any such item was or was not executed and delivered or action taken in a similar context or on a prior occasion).

11.2 **Identification of Collateral.** Upon Seller's reasonable request, the Purchaser will furnish to the Seller, from time to time, statements and schedules, if any, that Purchaser has prepared in the ordinary course of its business that further identify and describe the Collateral.

11.3 **Attorney-in-Fact.** In furtherance, and not in limitation, of the other rights, powers and remedies granted to the Seller in this Agreement, upon the occurrence and during the continuation of an Event of Default, the Purchaser hereby appoints the Seller the Purchaser's attorney-in-fact, with full authority in the place and stead of Purchaser and in the name of Purchaser or otherwise, from time to time in the Seller's good faith discretion, to take any action (including the right to collect on any Collateral) and to execute any instrument that the Seller may reasonably believe is necessary or advisable to accomplish the purposes of this Note & Security Agreement, in a manner consistent with the terms hereof.

12. **Taxes and Claims.** The Purchaser will promptly pay all material taxes and other material charges levied or assessed by any Governmental Authority upon or against any Collateral or upon or against the creation, perfection or continuance of the security interest, except to the extent such taxes, charges or claims are being contested by the Purchaser in good faith by appropriate proceedings.

13. **Books and Records.** The Purchaser will keep and maintain, at its own cost and expense, records of the Collateral in the ordinary course of its business consistent with past practice.

14. **Inspection, Reports, Verifications.** Upon the occurrence and during the continuation of an Event of Default, the Purchaser will at all reasonable times permit the Seller or its representatives to examine or inspect any Collateral, any evidence of Collateral and the Purchaser's books and records concerning the Collateral, wherever located.

15. **Notice of Loss.** The Purchaser will promptly notify the Seller of any material loss of or material damage to any item of Collateral with a fair market value in excess of \$50,000.

16. **Insurance.** The Purchaser will insure the Collateral in the ordinary course of its business consistent with past practice.

17. **Events of Default.** If any of the following events ("Events of Default") occurs:

(a) Purchaser shall fail to pay any principal amount or interest due under this Note & Security Agreement when the same becomes due and payable and has failed to cure such failure within ten (10) Business Days of written notice of such failure by Seller to Purchaser;

(b) Purchaser shall fail to observe or perform, in any material respect, any covenant of Purchaser set forth in this Note & Security Agreement and fails to diligently commence, within ten (10) Business Day of written notice of such failure by Seller to Purchaser, to cure the same;

(c) Purchaser shall suffer a casualty of \$500,000 or more to any item of any uninsured Collateral;

(d) Purchaser shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or application or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement, consolidation, compromise or readjustment of its debts or seeking a stay which has the effect of staying any creditor or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of an interim receiver, a receiver, a receiver and manager, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due;

(e) An involuntary petition shall be filed or application made or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation, compromise, or readjustment of the debts of the Purchaser or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing and such petition or proceeding shall not be dismissed within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

(f) An interim receiver, administrator, administrative receiver, receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for Purchaser or for all or any part of his property shall be appointed or a warrant of attachment, execution or



similar process shall be issued in any jurisdiction against any part of the property of Purchaser; or

(g) An Event of Default (as defined in the 503(b)(9) Note) has occurred.

then and, in any such event, Seller may proceed to protect and enforce its rights in the manner set forth in Section 16 hereof.

18. **Remedies.** If an Event of Default has occurred, (a) at the option of Seller by written notice to Purchaser, in the case of an Event of Default (other than an Event of Default under Section 16(d), (e) or (f)), and immediately and automatically, without notice or declaration of any kind, in the case of an Event of Default under Section 16(d), (e) or (f), any and all amounts outstanding hereunder shall at once become due and payable in full and in the manner set forth in Sections 2 and 4 hereof and (b) Seller may proceed to protect and enforce all rights, remedies and recourse as shall be available to Seller by law, equity, statute or otherwise by a suit or other appropriate proceeding, whether, without limitation, for the specific performance of any covenant or agreement contained in this Note & Security Agreement, or for an injunction against a violation of any of the terms hereof or in aid of the exercise of any right, power or remedy granted hereby or by law, equity, statute or otherwise. No course of dealing and no delay on the part of Seller in exercising any right, power or remedy will operate as a waiver thereof or otherwise prejudice Seller's rights, powers or remedies. No right, power or remedy conferred hereby is exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, by statute or otherwise. The Purchaser hereby waives protest, presentment, demand for payment, notice of dishonor and notice of acceleration of maturity and agrees to continue to remain bound for the payment of principal, interest and all other sums due under this Note & Security Agreement, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note & Security Agreement or by way of any extension or extensions of time for the payment of principal and interest. The Purchaser shall pay all costs of collection when incurred, including, without limitation, reasonable attorneys' fees, costs and other expenses. The Seller may, as applicable, exercise and enforce any and all rights and remedies available upon default to a secured party under Division 9 of the Uniform Commercial Code as adopted in the State of California, or as allowed to the trustee or beneficial holder (as applicable) of a deed of trust pursuant to California law.

19. **Costs and Expenses.** If an Event of Default has occurred, the Purchaser will reimburse the Seller on demand for all reasonable out-of-pocket expenses (including all reasonable fees and expenses of counsel and of any experts and agents) incurred by the Seller in connection with the foreclosure or enforcement of Seller's security interest and the enforcement of this Note & Security Agreement, and all such costs and expenses will be part of the obligations secured by the security interest granted in this Note & Security Agreement.

20. **The Seller's Duties as the Secured Party.** The powers conferred on the Seller hereunder are solely to protect its interest in the Collateral and will not impose any duty upon it to exercise any such powers. The Seller will be deemed to have exercised reasonable care in the

safekeeping of any Collateral in its possession if such Collateral is accorded treatment substantially equal to the safekeeping which the Seller accords its own property of like kind. Except for the safekeeping of any Collateral in its possession and the accounting for monies and for other properties actually received by it hereunder, the Seller will not have any duty, as to any Collateral, as to the taking of any necessary steps to preserve rights against any persons or any other rights pertaining to any Collateral. The Seller does not have any fiduciary relationship to the Purchaser, the relationship being solely that of creditor and debtor.

21. **Amendments; Waiver of Breaches.** This Note & Security Agreement may not be amended or otherwise modified or terminated (prior to payment in full in cash of all amounts owed by the Purchaser hereunder), except by a writing duly executed by the Purchaser and Seller. A waiver so signed will be effective only in the specific instance and for the specific purpose given. No waiver by Seller of any breach by the Purchaser of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision of this Note & Security Agreement. Mere delay or failure to act will not preclude the exercise or enforcement of any rights and remedies available to the Seller. All rights and remedies of the Seller will be cumulative and may be exercised singly in any order or sequence, or concurrently, at the Seller's option, and the exercise or enforcement of any such right or remedy will neither be a condition to nor bar the exercise or enforcement of any other right or remedy.

22. **Notices.** Any notice or other communication to any party in connection with this Note & Security Agreement will be in writing and will be sent by manual delivery, facsimile transmission, overnight courier or United States mail (postage prepaid) addressed to such party at the address specified on the signature page hereof, or at such other address as such party will have specified to the other party hereto in writing. All periods of notice will be measured from the date of delivery thereof if manually delivered, from the date of sending thereof with confirmed receipt if sent by facsimile transmission, from the first business day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed.

23. **Successors and Assigns.** The provisions of this Note & Security Agreement shall inure to the benefit of the Seller and any successor thereto by assignment or operation of law, and shall extend to any holder hereof, and shall be binding on any successor to the Purchaser. Notwithstanding the foregoing, the Purchaser's obligations under this Note & Security Agreement are not assignable. This Note & Security Agreement will (a) create a continuing security interest in the Collateral and will remain in full force and effect until payment in full of the obligations due hereunder, (b) be binding upon the Purchaser, its successors and assigns, and (c) inure to the benefit of, and be enforceable by, the Seller and its successors, transferees, and assigns.

24. **Headings.** Section headings used in this Note & Security Agreement are solely for convenience of reference and shall not affect the construction of this Note & Security Agreement.



25. **Severability.** Each provision of this Note & Security Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which shall remain binding and enforceable, and the rights and obligations of the parties hereto hereunder shall be construed and enforced only to such extent as shall be permitted by applicable law.

26. **Governing Law; Dispute Resolution.** This Note & Security Agreement shall be governed by and construed in accordance with, and the rights of the Purchaser and Seller with respect hereto shall be determined under, the laws of the State of California. Any action or proceeding relating in any way to this Note & Security Agreement shall be brought in the Bankruptcy case of In re Zacky Farms, LLC, E.D. Cal. Case No. 12-37961-B-11 (the "Bankruptcy Case"). If the action or proceeding is commenced after the Bankruptcy Case is closed then such matter shall be brought and enforced in any court of competent jurisdiction in Sacramento, California. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, any objection that such party may now or hereafter have to the laying of venue of any such action or proceeding in the courts of the State of California or the United States District Court for the Central District of California, in each case, sitting in Los Angeles, California, and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

27. **Counterparts.** This Note & Security Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument.


28. **No Fraudulent Conveyance.** It is the intention of the Purchaser and the Seller that this Note & Security Agreement not constitute a fraudulent transfer or fraudulent conveyance under any state or federal law that may be applied hereto.

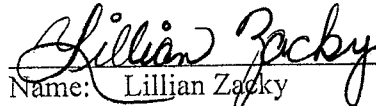
*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Note & Security Agreement and delivered the same as of the date first written above.

**PURCHASER:**

Zacky & Sons Poultry, LLC, a California limited liability company

By: ~~The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988, as its Sole Member~~ 

By:   
Name: Lillian Zacky  
Title: Manager

**Notice Address:**

Zacky & Sons Poultry, LLC  
149 S. Barrington Ave., Suite 720  
Los Angeles, California 90049  
Attention: Lillian D. Zacky

**SELLER:**

Zacky Farms, LLC, debtor in possession,

By: \_\_\_\_\_  
Name: Keith F. Cooper  
Title: Sole Manager and Chief Restructuring Officer

**Notice Address:**

Zacky Farms, LLC  
1111 Navy Street  
Stockton, California 95206  
Attention: Keith Cooper  
Fax: 559-443-2706

*[Signature page to page to Creditor Recovery Note]*

IN WITNESS WHEREOF, the Parties have executed this Note & Security Agreement and delivered the same as of the date first written above.

**PURCHASER:**

Zacky & Sons Poultry, LLC, a California limited liability company


By: \_\_\_\_\_  
Name: Lillian Zacky  
Title: Sole Member

**Notice Address:**

Zacky & Sons Poultry, LLC  
149 S. Barrington Ave., Suite 720  
Los Angeles, California 90049  
Attention: Lillian D. Zacky

**SELLER:**

Zacky Farms, LLC, debtor in possession,

By:  \_\_\_\_\_  
Name: Keith F. Cooper  
Title: Sole Manager and Chief Restructuring Officer

**Notice Address:**

Zacky Farms, LLC  
1111 Navy Street  
Stockton, California 95206  
Attention: Keith Cooper  
Fax: 559-443-2706

## SCHEDULE A

Facility Name	Address	City	State	ZIP
Grower Ranch (18 <sup>th</sup> ) APN 026-060-007 (78.79 acres)	17432 18 <sup>th</sup> Avenue	Lemoore	CA	93245
Grower Ranch (Kent) APN 024-170-073 (77.19 acres)	19774 Kent Avenue	Lemoore	CA	93245
Grower Ranch (Holm) APN 024-170-020 (40 acres)	16395 & 16485 19 <sup>th</sup> Avenue	Lemoore	CA	93245
Grower Ranch (6 <sup>th</sup> Brood, Red and Gray) APNs 046-270-004 & 035 (400 acres)	43501 6 <sup>th</sup> Avenue	Corcoran	CA	93212
Grower Ranch (Brawley) APN 053-090-37 (80 acres)	19010 & 19012 S. Brawley Avenue	Riverdale	CA	93609
Grower Ranch (Experimental) APN 043-050-15 (20 acres)	590 W. Kamm Avenue	Fresno	CA	93725
Grower Ranch (G & H) APN 035-060-90 (80 acres)	8351 McMullin Grade	Fresno	CA	93725
Turkey Hatchery APN 023-060-44S (3.99 acres)	1486 S. Industrial Way	Kerman	CA	93630

# EXHIBIT 2

*EXECUTION VERSION*

**503(b)(9) NOTE & SECURITY AGREEMENT**

\$6,400,000

Los Angeles, California  
February 26, 2013

FOR VALUE RECEIVED, ZACKY & SONS POULTRY, LLC (the "Purchaser"), hereby unconditionally promises to pay, in the manner set forth below, for the benefit of holders of finally allowed claims arising under Section 503(b)(9) of the Bankruptcy Code against ZACKY FARMS, LLC (the "Seller"), the principal sum of SIX MILLION FOUR HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$6,400,000.00) (as such amount may be reduced from time to time pursuant to Section 3 hereof, the "Principal Sum"), plus interest on the Principal Sum as set forth in Section 1 hereof, it being understood that the Principal Sum is subject to reduction at the Maturity Date (as defined below) pursuant to Section 2 hereof. All capitalized terms which are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of February 6, 2013, by and between The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988 and Seller (the "Asset Purchase Agreement").

1. **Interest.** Interest on the unpaid principal amount of this Note & Security Agreement outstanding from time to time shall accrue from the date hereof to and including the date on which the outstanding principal and accrued and unpaid interest is paid in full, at the interest rate of four percent (4%) per annum, payable quarterly in arrears on (a) the date that is ninety (90) days from the date hereof and (b) the date that is one hundred eighty (180) days from the date hereof, and if either such date shall be a day other than a Business Day, then such interest shall be payable on the next Business Day after such date. All interest hereunder shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed.

2. **Repayment of Principal.** On the date that is one hundred eighty (180) days from the date hereof or, if such date shall be a day other than a Business Day, then the next Business Day (the "Maturity Date"), the Principal Sum shall be automatically reduced by an amount equal to fifty percent (50%) of the amount by which \$6,400,000 exceeds the finally allowed amount of claims against Seller arising under Section 503(b)(9) of the Bankruptcy Code as of the Maturity Date, but in no event shall the Principal Sum be reduced below \$0. On the Maturity Date, the Principal Sum (after the application of the foregoing sentence) shall become due and payable.

3. **Prepayment.** The Purchaser at any time or from time to time may prepay, in cash, the unpaid principal amount of or interest on this Note & Security Agreement, in whole or in part, without penalty or premium. If Purchaser shall sell any Collateral (as defined below) with net proceeds of no less than \$50,000 other than in the ordinary course of business, the proceeds of such sale shall be applied to the prepayment of this Note & Security Agreement, to the extent there are any amounts outstanding hereunder. Any net amount of insurance proceeds received on account of the Collateral remaining after the cost of replacement of such Collateral

shall be applied to the prepayment of this Note & Security Agreement, to the extent there any amounts outstanding hereunder.

4. **Manner of Making Payments.** Payment of any amounts hereunder (whether principal or interest) shall be made to the 503(b)(9) Account in United States dollars by wire transfer of immediately available funds not later than 2:00 p.m., Los Angeles, California time, on the date such payment is due, or an optional prepayment is made.

5. **Application of Payments.** All payments made hereunder shall be applied first to accrued and unpaid interest and then to the unpaid principal amount hereof (which shall reduce the then current Principal Sum).

6. **Pledge of Collateral.** As collateral security for the prompt and complete payment of the Purchaser's obligation under this Note & Security Agreement (whether at the stated maturity, by acceleration, or otherwise), the Purchaser hereby grants to Seller a continuing security interest in (i) other than real property, all property rights and rights of Purchaser in all its assets, now owned or hereafter at any time acquired by the Purchaser, including, without limitation, all accounts, accounts receivable, money, deposit accounts, goods, inventory, chattel paper, documents, instruments, insurance proceeds, investment property, letter-of-credit rights, payment intangibles, general intangibles, commodity contracts, commodity accounts, farm products and livestock (the "Non-Real Estate Collateral") and (ii) the collateral set forth on Schedule A hereto (the "Real Estate Collateral") and any other tangible or intangible property received upon the sale or other disposition of all or any of the foregoing (collectively, the Non-Real Estate Collateral and the Real Estate Collateral, the "Collateral"). The Purchaser hereby irrevocably authorizes Seller, at any time and from time to time, to file in any appropriate filing office, wherever located, any financing statement describing the Collateral that contains any information required by the Uniform Commercial Code of the applicable jurisdiction for the sufficiency or filing office acceptance of any financing statement. The Purchaser also authorizes Seller to take any and all actions required by law, equity, statute or otherwise to perfect and protect the security interest granted hereunder.

7. **Termination of Security Interest.** Upon the payment in full of any and all amounts outstanding in connection with or due under this Note & Security Agreement, the security interest granted to Seller in the Collateral shall terminate. Upon any such termination, Seller shall execute and deliver to the Purchaser such documents as the Purchaser will reasonably request to evidence such termination.

8. **Title to Collateral.** The Purchaser shall not affirmatively grant a security interest in or lien on the Collateral that is senior to or *pari passu* with the interests in Collateral provided by this Note & Security Agreement. The Purchaser will take all commercially reasonable efforts to defend the Collateral against all material claims or demands of all Persons (other than the Seller) claiming the Collateral or any interest therein.

9. **Name and Jurisdiction of Organization.** The Purchaser represents and warrants that the Purchaser's legal name is as set forth in the opening paragraph hereof, and that the

Purchaser is organized and in good standing in the State of California. The Purchaser will not change its name or jurisdiction of organization unless the Seller has been given at least ten (10) Business Days prior written notice thereof.

10. **Further Assurances; Attorney-in-Fact.**

10.1 **Further Assurances.** The Purchaser agrees that, from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Seller may reasonably request, in order to perfect and protect the security interest granted or purported to be granted hereby or to enable the Seller to exercise and enforce its rights and remedies hereunder with respect to any Collateral (but any failure to request or assure that the Purchaser execute and deliver such instrument or documents or to take such action will not affect or impair the validity, sufficiency or enforceability of this Note & Security Agreement and the security interest, regardless of whether any such item was or was not executed and delivered or action taken in a similar context or on a prior occasion).

10.2 **Identification of Collateral.** Upon Seller's reasonable request, the Purchaser will furnish to the Seller, from time to time, statements and schedules, if any, that Purchaser has prepared in the ordinary course of its business that further identify and describe the Collateral.

10.3 **Attorney-in-Fact.** In furtherance, and not in limitation, of the other rights, powers and remedies granted to the Seller in this Agreement, upon the occurrence and during the continuation of an Event of Default, the Purchaser hereby appoints the Seller the Purchaser's attorney-in-fact, with full authority in the place and stead of Purchaser and in the name of Purchaser or otherwise, from time to time in the Seller's good faith discretion, to take any action (including the right to collect on any Collateral) and to execute any instrument that the Seller may reasonably believe is necessary or advisable to accomplish the purposes of this Note & Security Agreement, in a manner consistent with the terms hereof.

11. **Taxes and Claims.** The Purchaser will promptly pay all material taxes and other material charges levied or assessed by any Governmental Authority upon or against any Collateral or upon or against the creation, perfection or continuance of the security interest, except to the extent such taxes, charges or claims are being contested by the Purchaser in good faith by appropriate proceedings. The Purchaser will pay any and all amounts due to suppliers of feed to the Purchaser such that neither of the following events occur: (i) suppliers of feed cease delivering feed to the Purchaser for five or more consecutive days on the basis of non-payment or (ii) suppliers of feed exercise remedies with respect to any statutory liens on the Collateral resulting in a material interruption in the Business that continues for five or more consecutive days.

12. **Books and Records.** The Purchaser will keep and maintain, at its own cost and expense, records of the Collateral in the ordinary course of its business consistent with past practice.



13. **Inspection, Reports, Verifications.** Upon the occurrence and during the continuation of an Event of Default, the Purchaser will at all reasonable times permit the Seller or its representatives to examine or inspect any Collateral, any evidence of Collateral and the Purchaser's books and records concerning the Collateral, wherever located.

14. **Notice of Loss.** The Purchaser will promptly notify the Seller of any material loss of or material damage to any item of Collateral with a fair market value in excess of \$50,000.

15. **Insurance.** The Purchaser will insure the Collateral in the ordinary course of its business consistent with past practice.

16. **Events of Default.** If any of the following events ("Events of Default") occurs:

(a) Purchaser shall fail to pay any principal amount or interest due under this Note & Security Agreement when the same becomes due and payable and has failed to cure such failure within ten (10) Business Days of written notice of such failure by Seller to Purchaser;

(b) Purchaser shall fail to observe or perform, in any material respect, any covenant of Purchaser set forth in this Note & Security Agreement and fails to diligently commence, within ten (10) Business Day of written notice of such failure by Seller to Purchaser, to cure the same;

(c) Purchaser shall suffer a casualty of \$500,000 or more to any item of any uninsured Collateral, excluding live poultry;

(d) Purchaser shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or application or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement, consolidation, compromise or readjustment of its debts or seeking a stay which has the effect of staying any creditor or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of an interim receiver, a receiver, a receiver and manager, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due;

(e) An involuntary petition shall be filed or application made or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation, compromise, or readjustment of the debts of the Purchaser or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing and such petition or proceeding shall not be dismissed

within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

(f) An interim receiver, administrator, administrative receiver, receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for Purchaser or for all or any part of his property shall be appointed or a warrant of attachment, execution or similar process shall be issued in any jurisdiction against any part of the property of Purchaser; or

(g) An Event of Default (as defined in the Creditor Recovery Note) has occurred.

then and, in any such event, Seller may proceed to protect and enforce its rights in the manner set forth in Section 17 hereof.

17. **Remedies.** If an Event of Default has occurred, (a) at the option of Seller by written notice to Purchaser, in the case of an Event of Default (other than an Event of Default under Section 16(d), (e) or (f)), and immediately and automatically, without notice or declaration of any kind, in the case of an Event of Default under Section 16(d), (e) or (f), any and all amounts outstanding hereunder shall at once become due and payable in full and in the manner set forth in Sections 2 and 4 hereof (with the "Maturity Date" being such date the amounts outstanding hereunder shall become due and payable in full) and (b) Seller may proceed to protect and enforce all rights, remedies and recourse as shall be available to Seller by law, equity, statute or otherwise by a suit or other appropriate proceeding, whether, without limitation, for the specific performance of any covenant or agreement contained in this Note & Security Agreement, or for an injunction against a violation of any of the terms hereof or in aid of the exercise of any right, power or remedy granted hereby or by law, equity, statute or otherwise. No course of dealing and no delay on the part of Seller in exercising any right, power or remedy will operate as a waiver thereof or otherwise prejudice Seller's rights, powers or remedies. No right, power or remedy conferred hereby is exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, by statute or otherwise. The Purchaser hereby waives protest, presentment, demand for payment, notice of dishonor and notice of acceleration of maturity and agrees to continue to remain bound for the payment of principal, interest and all other sums due under this Note & Security Agreement, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note & Security Agreement or by way of any extension or extensions of time for the payment of principal and interest. The Purchaser shall pay all costs of collection when incurred, including, without limitation, reasonable attorneys' fees, costs and other expenses. The Seller may, as applicable, exercise and enforce any and all rights and remedies available upon default to a secured party under Division 9 of the Uniform Commercial Code as adopted in the State of California, or as allowed to the trustee or beneficial holder (as applicable) of a deed of trust pursuant to California law.

18. **Costs and Expenses.** If an Event of Default has occurred, the Purchaser will reimburse the Seller on demand for all reasonable out-of-pocket expenses (including all

reasonable fees and expenses of counsel and of any experts and agents) incurred by the Seller in connection with the foreclosure or enforcement of Seller's security interest and the enforcement of this Note & Security Agreement, and all such costs and expenses will be part of the obligations secured by the security interest granted in this Note & Security Agreement.

19. **The Seller's Duties as the Secured Party.** The powers conferred on the Seller hereunder are solely to protect its interest in the Collateral and will not impose any duty upon it to exercise any such powers. The Seller will be deemed to have exercised reasonable care in the safekeeping of any Collateral in its possession if such Collateral is accorded treatment substantially equal to the safekeeping which the Seller accords its own property of like kind. Except for the safekeeping of any Collateral in its possession and the accounting for monies and for other properties actually received by it hereunder, the Seller will not have any duty, as to any Collateral, as to the taking of any necessary steps to preserve rights against any persons or any other rights pertaining to any Collateral. The Seller does not have any fiduciary relationship to the Purchaser, the relationship being solely that of creditor and debtor.

20. **Amendments; Waiver of Breaches.** This Note & Security Agreement may not be amended or otherwise modified or terminated (prior to payment in full in cash of all amounts owed by the Purchaser hereunder), except by a writing duly executed by the Purchaser and Seller. A waiver so signed will be effective only in the specific instance and for the specific purpose given. No waiver by Seller of any breach by the Purchaser of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision of this Note & Security Agreement. Mere delay or failure to act will not preclude the exercise or enforcement of any rights and remedies available to the Seller. All rights and remedies of the Seller will be cumulative and may be exercised singly in any order or sequence, or concurrently, at the Seller's option, and the exercise or enforcement of any such right or remedy will neither be a condition to nor bar the exercise or enforcement of any other right or remedy.

21. **Notices.** Any notice or other communication to any party in connection with this Note & Security Agreement will be in writing and will be sent by manual delivery, facsimile transmission, overnight courier or United States mail (postage prepaid) addressed to such party at the address specified on the signature page hereof, or at such other address as such party will have specified to the other party hereto in writing. All periods of notice will be measured from the date of delivery thereof if manually delivered, from the date of sending thereof with confirmed receipt if sent by facsimile transmission, from the first business day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed.

22. **Successors and Assigns.** The provisions of this Note & Security Agreement shall inure to the benefit of the Seller and any successor thereto by assignment or operation of law, and shall extend to any holder hereof, and shall be binding on any successor to the Purchaser. Notwithstanding the foregoing, the Purchaser's obligations under this Note & Security Agreement are not assignable. This Note & Security Agreement will (a) create a continuing security interest in the Collateral and will remain in full force and effect until payment in full of the obligations due hereunder, (b) be binding upon the Purchaser, its

successors and assigns, and (c) inure to the benefit of, and be enforceable by, the Seller and its successors, transferees, and assigns.

23. **Headings.** Section headings used in this Note & Security Agreement are solely for convenience of reference and shall not affect the construction of this Note & Security Agreement.

24. **Severability.** Each provision of this Note & Security Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which shall remain binding and enforceable, and the rights and obligations of the parties hereto hereunder shall be construed and enforced only to such extent as shall be permitted by applicable law.

25. **Governing Law; Dispute Resolution.** This Note & Security Agreement shall be governed by and construed in accordance with, and the rights of the Purchaser and Seller with respect hereto shall be determined under, the laws of the State of California. Any action or proceeding relating in any way to this Note & Security Agreement shall be brought in the Bankruptcy case of In re Zacky Farms, LLC, E.D. Cal. Case No. 12-37961-B-11 (the "Bankruptcy Case"). If the action or proceeding is commenced after the Bankruptcy Case is closed then such matter shall be brought and enforced in any court of competent jurisdiction in Sacramento, California. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, any objection that such party may now or hereafter have to the laying of venue of any such action or proceeding in the courts of the State of California or the United States District Court for the Central District of California, in each case, sitting in Los Angeles, California, and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

26. **Counterparts.** This Note & Security Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument.

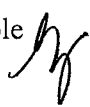
27. **No Fraudulent Conveyance.** It is the intention of the Purchaser and the Seller that this Note & Security Agreement not constitute a fraudulent transfer or fraudulent conveyance under any state or federal law that may be applied hereto.

*[The remainder of this page is intentionally left blank.]*

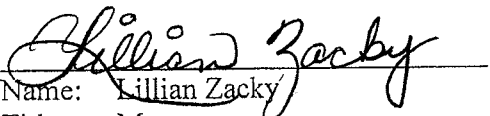
IN WITNESS WHEREOF, the Parties have executed this Note & Security Agreement and delivered the same as of the date first written above.

**PURCHASER:**

Zacky & Sons Poultry, LLC, a California limited liability company

By: ~~The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988, as its Sole Member~~ 

By:

  
Name: Lillian Zacky  
Title: Manager

**Notice Address:**

Zacky & Sons Poultry, LLC  
149 S. Barrington Ave., Suite 720  
Los Angeles, California 90049  
Attention: Lillian D. Zacky

**SELLER:**

Zacky Farms, LLC, debtor in possession,

By:

\_\_\_\_\_  
Name: Keith F. Cooper  
Title: Sole Manager and Chief Restructuring Officer

**Notice Address:**

Zacky Farms, LLC  
1111 Navy Street  
Stockton, California 95206  
Attention: Keith Cooper  
Fax: 559-443-2706

*[Signature page to page to 503 (b)(9) Note]*

IN WITNESS WHEREOF, the Parties have executed this Note & Security Agreement and delivered the same as of the date first written above.

**PURCHASER:**

Zacky & Sons Poultry, LLC, a California limited liability company


By: \_\_\_\_\_  
Name: Lillian Zacky  
Title: Sole Member

**Notice Address:**

Zacky & Sons Poultry, LLC  
149 S. Barrington Ave., Suite 720  
Los Angeles, California 90049  
Attention: Lillian D. Zacky

**SELLER:**

Zacky Farms, LLC, debtor in possession,

By:  \_\_\_\_\_  
Name: Keith F. Cooper  
Title: Sole Manager and Chief Restructuring Officer

**Notice Address:**

Zacky Farms, LLC  
1111 Navy Street  
Stockton, California 95206  
Attention: Keith Cooper  
Fax: 559-443-2706

## SCHEDULE A

The real property assets set forth below:

Facility Name	Address	City	State	ZIP
Stockton Plant APN 163-260-07 (15.17 acres)	1111 Navy Drive	Stockton	CA	95206
Warehouse APN 458-240-09	By Fresno Mill	Fresno	CA	
Vacant Land 57 APN 028-030-032	Approximately 58.30 acres open land located in Hanford, CA	Hanford	CA	
Turkey Processing Plant APN 480-040-06S (4.98 acres)	2222 & 2240 S. East Avenue	Fresno	CA	93721
Empire Facility APN 480-040-11 (11.53 acres)	2950 E. California Street	Fresno	CA	93721
Litter Yard APN 055-310-29 (22.56 acres)	18804 S. Camden Avenue	Laton	CA	93242
Garage APN 458-250-02 (2.18 acres)	190 N. Thorne Avenue	Fresno	CA	93706
Mill Annex APN 458-240-09 (.48 acres)	245, 249, 251 North H Street	Fresno	CA	93701
Corporate Offices APN 468-040-07S (9.57 acres)	1888 & 2020 S. East Avenue	Fresno	CA	93721
Warehouse APN 480-040-07 (2.97 acres)	2272 S. East Avenue	Fresno	CA	93721

# EXHIBIT 3



---

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**THE ROBERT D. ZACKY AND LILLIAN D. ZACKY TRUST  
U/D/T DATED JULY 26, 1988**

**AND**

**ZACKY FARMS, LLC**

**FEBRUARY 6, 2013**

---

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** dated as of February 6, 2013 (this "Agreement") is entered into by and between The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988, a California trust ("Purchaser"), and Zacky Farms, LLC, a California limited liability company ("Seller"). Purchaser and Seller are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties."

### RECITALS:

**WHEREAS**, Seller operates a vertically integrated poultry business consisting of breeding, hatching and growing turkeys and chickens, processing fresh and frozen poultry products, and marketing and distributing such products to retail and foodservice customers (the "Business");

**WHEREAS**, Seller desires to sell, transfer, convey, assign and deliver the Purchased Assets (as defined below) and to assign the Assumed Liabilities (as defined below), and Purchaser desires to purchase, take delivery of, and acquire such Purchased Assets and to assume such Assumed Liabilities, upon the terms and subject to the conditions set forth herein;

**WHEREAS**, on October 8, 2012 (the "Petition Date"), Seller filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of California (the "Bankruptcy Court");

**WHEREAS**, Seller's chapter 11 bankruptcy case is currently being administered under Case No. 12-37961-B-11 in the Bankruptcy Court (the "Bankruptcy Case");

**WHEREAS**, on November 20, 2012, the Bankruptcy Court entered an order [Docket No. 323] (the "Sale Procedures Order") approving certain marketing and sale procedures related to the sale of Seller's assets (including the Purchased Assets); and

**WHEREAS**, the transactions contemplated by this Agreement (the "Transactions") will be consummated pursuant to an Approval Order (as defined below) to be entered in the Bankruptcy Case under Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code, and the Transactions and this Agreement are subject to the approval of the Bankruptcy Court.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements, covenants, representations, warranties and promises set forth herein, and in order to prescribe the terms and conditions of such purchase and sale, intending to be legally bound, the Parties agree as follows:

### **1. Definitions.**

1.1. Definitions. The following terms, as used herein, have the following meanings:



(a) “503(b)(9) Account” means a control account to be established by Seller to hold proceeds from the 503(b)(9) Note, with respect to which the prior written consent of the Purchaser, Seller and the Committee shall be required for the release of any proceeds, with such consent to be given in accordance with Section 2.9(b) of this Agreement.

(b) “Accounts Receivable” means all accounts and notes receivable (whether current or non-current) of Seller in respect of goods shipped, products sold or services rendered prior to the Closing Date.

(c) “Acquired Real Property” means all of the real property of Seller, together with all Improvements located thereon and all easements, rights of way, servitudes, tenements, hereditaments, appurtenances, privileges and other rights and interests appurtenant thereto owned by Seller.

(d) “Administrative Claims” means those allowed administrative claims arising under section 503 of the Bankruptcy Code.

(e) “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person.

(f) “Business Day” means a day other than Saturday, Sunday or other day on which commercial banks in Fresno, California are authorized or required by Law to close.

(g) “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), and any Laws promulgated thereunder.

(h) “Claim” means a “claim” as defined in Section 101 of the Bankruptcy Code.

(i) “Closing Date” means the date of the Closing.

(j) “Code” means the Internal Revenue Code of 1986, as amended.

(k) “Contract Motions” means the following motions filed by Seller in the Bankruptcy Case: (i) *Debtor’s Motion for Authority to Assume and Assign Certain Unexpired Nonresidential Real Property Leases in Connection with the Proposed Sale of Substantially all of the Debtor’s Assets* [Docket No. 387]; (ii) *Debtor’s Motion for Authority to Assume and Assign Certain Grower Contracts in Connection with the Proposed Sale of Substantially all of the Debtor’s Assets* [Docket No. 392]; (iii) *Debtor’s Motion for Authority to Assume and Assign Certain Supply Contracts in Connection with the Proposed Sale of Substantially all of the Debtor’s Assets* [Docket No. 396]; and (iv) *Debtor’s Motion for Authority to Assume and Assign Certain Unexpired Other Executory Contracts and Leases in Connection with the Proposed Sale of Substantially*



*all of the Debtor's Assets* [Docket No. 400], together with any other motions filed by Seller with respect to the assumption and assignment of the Assumed Contracts.

(l) “Contract Orders” means the Orders of the Bankruptcy Court in the Bankruptcy Case granting the Contract Motions.

(m) “Creditor Recovery Account” means a segregated account to be established by Seller to hold proceeds from the Creditor Recovery Note

(n) “Cure Costs” means all amounts that must be paid, including any amounts provided for in the Contract Orders, and all obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the Assumed Contracts to Purchaser as provided herein.

(o) “DIP Agreement” means that certain Senior Secured Superpriority Debtor in Possession Credit Agreement dated October 8, 2012, by and between Seller and Purchaser.

(p) “Employee Benefit Plan” means any “employee benefit plan” (as defined in ERISA § 3(3)) and any other benefit or compensation plan, program, agreement or arrangement maintained, sponsored, or contributed or required to be contributed to by Seller or any ERISA Affiliate or with respect to which Seller or any ERISA Affiliate has any liability, including any Multiemployer Plan.

(q) “Environmental Laws” means, whenever in effect, all federal, state, and local Laws and other provisions having the force or effect of Law, all judicial and administrative Orders and determinations, all contractual obligations and all common Law, in each case concerning public health and safety, pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, processing, discharge, Release, threatened Release, control, or cleanup of any Hazardous Substances or wastes (including CERCLA and analogous state Laws).

(r) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all Laws issued thereunder.

(s) “ERISA Affiliate” means any Person that, at any relevant time, is or was treated as a single employer with Seller for purposes of Code § 414.

(t) “Excess 503(b)(9) Amount” means the amount obtained by subtracting (i) the actual amount of finally allowed claims arising under section 503(b)(9) of the Bankruptcy Code against Seller from (ii) \$6,400,000, but in no event shall the Excess 503(b)(9) Amount be less than \$0.

(u) “Final Order” means an Order or judgment of the Bankruptcy Court as entered on the docket of the Clerk of the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for



certiorari, reargue or seek rehearing has expired and no proceeding for certiorari, reargument or rehearing is pending or if an appeal, petition for certiorari, reargument, or rehearing has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed, from which the reargument or rehearing was sought, or certiorari has been denied and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

(v) “GAAP” means, at a given time, United States generally accepted accounting principles, consistently applied.

(w) “Governmental Authority” means any federal, state, local, municipal, foreign, supranational or other governmental or quasi-governmental authority of any nature (including any governmental agency, branch, bureau, commission, department, official or entity and any court or other tribunal), or any administrative, executive, judicial, legislative, police, regulatory or Taxing Authority, or arbitral body.

(x) “Grower Contract” means any contract or agreement between Seller, on the one hand, and a third party, on the other hand, pursuant to which such third party has agreed to house, grow, feed or otherwise care for turkeys or chickens owned by Seller as set forth on Schedule 1.1(x).

(y) “Hazardous Substances” means any pollutants, contaminants or chemicals, and any industrial, toxic or otherwise hazardous materials, substances or wastes and any other substance with respect to which liability or standards of conduct may be imposed under any Environmental Laws, including petroleum and petroleum related substances, products, by products and wastes, asbestos, urea, formaldehyde and lead based paint.

(z) “Improvements” means all buildings, improvements, structures, streets, roads and fixtures located, placed, constructed or installed on or under the Acquired Real Property, including all utilities, fire protection, security, surveillance, telecommunications, computer, wiring, cable, heat, exhaust, ventilation, air conditioning, electrical, mechanical, plumbing and refrigeration systems, facilities, lines, installations and conduits.

(aa) “Intellectual Property Rights” means all of the intellectual property rights of Seller (but, in each case, only to the extent such intellectual property rights are transferrable without the consent of any third party), including: (i) patents, patent applications and patent rights; (ii) trademarks (registered and at common law), trademark registrations and applications, trade names, logos, trade dress, brand names, service marks (registered and at common law), service mark registrations and applications, websites, domain names and other indicia of source and all goodwill associated therewith; (iii) works of authorship, copyrights, copyright registrations and applications for registration, and moral rights; (iv) know-how, trade secrets, customer lists, proprietary information, proprietary processes and formulae, databases and data collections; (v) source and object code, software, algorithms, architecture, structure, display screens, layouts, inventions, and development tools; (vi) right, title and interest in and to the name



“Zacky Farms” and any abbreviations, derivations or variations thereof; and (vii) documentation and media constituting, describing or relating to the above, including, manuals, memoranda and records.

(bb) “Inventory” means all supplies, goods, finished goods, materials, raw materials, work in process, live inventory and stock in trade, including all grain inventory, eggs, live poultry, medication and vaccines, corn meal, soybean meal, finished feed and feed ingredients, manure, spices and ingredients, dressed poultry and packaging materials related to dressed poultry, replacement and spare parts and fuels and other similar items and any other inventory owned by Seller, wherever located, whether or not prepaid.

(cc) “Knowledge of Seller” or any other similar knowledge qualification in this Agreement means all facts actually known by the following individuals: Kirk VanderGeest, Keith Cooper, Sean Harding and Marcus Currey.

(dd) “Law” means any law, statute, regulation, rule, code, decree, constitution, ordinance, treaty, rule of common law, or Order of, or administered or enforced by or on behalf of, any Governmental Authority.

(ee) [Intentionally Omitted.]

(ff) “Leased Real Property” means the real property leased by Seller, together with, to the extent leased by Seller, all buildings and other structures or facilities currently or hereafter located thereon, all fixtures, systems, equipment and items of Personal Property of Seller attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing.

(gg) “Lien” means, with respect to any property or asset, any mortgage, lien (statutory or otherwise), pledge, security interest, Claim, encumbrance, restriction, charge, instrument, preference, priority, option, or right of first refusal, of any kind or nature, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown. For the avoidance of doubt, the definition of Lien shall not include any license or sublicense of Intellectual Property Rights granted by Seller, or any lease or sublease by Seller (as lessor or sublessor) of real property.

(hh) “Material Adverse Effect” means a material adverse effect on the Business, taken as a whole, excluding any such effect to the extent resulting from or arising in connection with (i) the Transactions or the public announcement thereof; (ii) changes or conditions affecting the industries generally in which Seller operates; (iii) changes in national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America; (iv) changes in financial, banking or



securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (v) changes in Law or in GAAP or interpretations thereof; (vi) the failure of Seller to meet or otherwise achieve internal or public projections, forecasts, financial goals, benchmarks or estimates, provided that the exceptions in this subsection (vi) are limited to any such failure in and of itself and shall not prevent or otherwise affect a determination that any change, event, effect or fact underlying such failure has resulted in, or contributed to, a Material Adverse Effect; (vii) changes resulting from the commencement and continuation of the Bankruptcy Case; (viii) the pendency or completion of the Transactions; (ix) any action take by Seller as required by this Agreement; or (x) actions taken by Seller pursuant to (or as contemplated by) Orders entered by the Bankruptcy Court in the Bankruptcy Case.

(ii) “Multiemployer Plan” means any “multiemployer plan” (as defined in ERISA § 3(37)) contributed to by Seller or any ERISA Affiliate or with respect to which Seller or any ERISA Affiliate has any liability.

(jj) “Non-Released Persons” means Richard N. Zacky, Big Feather Ranch, LLC, Lucky Wishbone, LLC, Trust A of the Albert and Beverly Zacky Trust, Trust B of the Albert and Beverly Zacky Trust, the Richard N. Zacky Irrevocable Trust dated 11/25/07, ZF Enterprises LLC, the Sharon Zacky Wilensky Irrevocable Trust dated 11/26/07, the Barbara Jean Zacky Irrevocable Trust dated 12/30/06, Sharon Zacky Wilensky, Barbara Jean Zacky, Integrated Grain and Milling, Inc., AB Ag Service, Inc. and American Huntsman, LLC.

(kk) “Order” means any award, decision, decree, order, directive, injunction, ruling, judgment, or consent of or entered, issued, made or rendered by any Governmental Authority.

(ll) “Permits” means licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, concessions, grants, plans and other similar documents and authorizations issued by any Government Authority to Seller.

(mm) “Permitted Liens” means (i) Liens granted by Purchaser at or after the Closing; (ii) non-monetary Liens that do not materially interfere with the ability of Purchaser to own and operate the Purchased Assets in substantially the manner as operated immediately prior to the execution of this Agreement; (iii) Liens that arise under zoning, building codes, land use and other similar Laws, none of which would materially interfere with the ownership or operation by Purchaser of the Purchased Assets following the Closing in substantially the manner as owned and operated immediately prior to the execution of this Agreement; (iv) Liens for Taxes not yet due and payable; (v) all covenants, agreements, conditions, easements, restrictions and rights affecting the Acquired Real Property that are reflected in the applicable real estate records; (vi) any and all matters that would be shown by a physical inspection of the Acquired Real Property; (vii) indebtedness to Robert Reiser & Co., Inc. secured by a security interest in one VEMAG Model MMP220 Minced Meat Portioner; one Model. 2380 Tray Feeder; and one Model 1120 Tray Denester - PTP pursuant to a UCC-1 financing statement filed



on October 31, 2011; and (viii) the asserted mechanic's lien of Justin Carey Enterprises Inc.

(nn) "Person" means an individual, corporation, partnership, limited liability company, association, joint venture, trust or other entity or organization, including a Governmental Authority.

(oo) "Property Taxes" means all real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Purchased Assets.

(pp) "Release" has the meaning set forth in CERCLA.

(qq) "Released Purchaser-Related Persons" means the Purchaser, Lillian D. Zacky, Scott Zacky, the Robert D. Zacky and Lillian D. Zacky Trust U/D/T dated 7/26/88, the Lillian D. Zacky Trust U/D/T dated 7/26/88, 7915 Deep Creek LLC, 20115 Del Oro, Apple Valley, LLC, 18606 Lords Road, Helendale, LLC, the Samuel, LLC.

(rr) "Tax" means (i) any tax, governmental fee or other like assessment or charge of any kind whatsoever (including withholding on amounts paid to or by any Person), together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (a "Taxing Authority") responsible for the imposition of any such tax (domestic or foreign), or (ii) liability for the payment of any amounts of the type described in clause (i) as a result of being party to any agreement or any express or implied obligation to indemnify any other Person.

1.2. Cross References. Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
503(b)(9) Note	2.9(a)
Agreement	Preamble
Allocation	2.9(c)
Approval Order	7.4
Assumption and Assignment Agreement	2.11(a)
Assumed Contracts	2.1(b)
Assumed Liabilities	2.3
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Budget	2.9(a)
Business	Recitals
Cash Purchase Price	2.9(a)
Closing	2.10
Committee	11.4
Creditor Recovery Note	2.9(a)
Credit Bid	2.9(a)



End Date	11.1(b)
Excluded Assets	2.2
Excluded Employees	5.5
Excluded Liabilities	2.4
Party or Parties	Preamble
Permitted Purchaser Assignee	12.3
Personal Property	2.1(g)
Petition Date	Recitals
Pitman	2.1
Pitman Breeder Purchase Agreement	2.1
Post-Petition Payables	2.3(g)
Potentially Assumed Contracts	2.1(b)
Purchase Price	2.9(a)
Purchased Assets	2.1
Purchaser	Preamble
Purchaser WARN Act Liabilities	6.5
Rejected Contracts	2.1(b)
Sale Procedures Order	Recitals
Seller	Preamble
Seller Contracts	2.1(b)
Seller Releasors	12.4
Seller WARN Act Liabilities	6.5
Taxing Authority	1.1(rr)
Transactions	Recitals
Transfer Taxes	8.2
Transferred Employees	5.5
WARN Act	6.5(a)

## 2. Purchase and Sale.

2.1. Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, at the Closing, Seller agrees to sell, transfer and deliver to Purchaser, and Purchaser agrees to purchase, acquire and accept from Seller, on an “as is, where is” basis and without any representation or warranty on the part of Seller as to fitness, merchantability or otherwise, all right, title and interest of Seller as of the Closing Date in and to the following assets, properties and rights (the “Purchased Assets”), free and clear of all Liens (other than Permitted Liens and Assumed Liabilities) to the maximum extent permitted by Sections 363 and 365 of the Bankruptcy Code; provided, however, to the extent that Seller and Pitman Family Farms (“Pitman”) close the transactions contemplated by that certain Asset Purchase Agreement (Lot 2), dated as of January 30, 2013, by and between Seller and Pitman Family Farms, pursuant to which Seller has agreed to sell the assets of the Business related to the operation of the breeder ranches (the “Pitman Breeder Purchase Agreement”), prior to the Closing, all assets and rights sold, transferred, assigned or otherwise conveyed to Pitman pursuant to the Pitman Breeder Purchase Agreement shall not be included in the Purchased Assets and shall be deemed Excluded Assets:

(a) all the Acquired Real Property, including all of the Acquired Real Property listed on Schedule 2.1(a);

(b) all contracts (other than Employee Benefit Plans) and leases to which Seller is party (the "Seller Contracts") that are identified on Schedule 2.1(b) (such Seller Contracts identified on Schedule 2.1(b), the "Assumed Contracts"), which list of Assumed Contracts shall be deemed to include the Grower Contracts, and all rights, privileges, deposits, cash prepayments, pre-paid items, open orders, claims and options relating or pertaining to the Assumed Contracts; provided, that at any time prior to Closing, Purchaser in its sole discretion may amend Schedule 2.1(b) to include additional Seller Contracts; provided that no later than the Closing Date, the Purchaser, in its sole discretion, may provide the Seller a list of additional Seller Contracts (such additional Seller Contracts, the "Potentially Assumed Contracts"), each of which it may designate as an Assumed Contract, in its sole discretion, by providing written notice to Seller no later than 30 days after the Closing Date; provided, however, that no Assumed Contract (including any Potentially Assumed Contract) shall be assumed by Seller and assigned to Purchaser until the Bankruptcy Court enters an Order approving such assumption and assignment after due and proper notice has been given to the third-party to such Assumed Contract (which notice shall be given by Seller promptly after Purchaser designates a Seller Contract as an Assumed Contract); provided further, that Purchaser shall have no obligation to acquire any rights or assume any obligations or liabilities with respect to any Seller Contract that is not an Assumed Contract (each such Seller Contract, a "Rejected Contract"); provided, however, that the Purchaser shall be liable for any Administrative Claims arising after the Closing Date on account of any Potentially Assumed Contract until such contract has been either assumed and assigned to Purchaser or otherwise rejected;

(c) all rights of Seller in or under any Employee Benefit Plan Purchaser is assuming pursuant to Section 5.5, including all pre-payments, deposits and refunds thereunder and any assets maintained pursuant thereto or in connection therewith;

(d) all of the Leased Real Property subject to a lease that is an Assumed Contract;

(e) all Accounts Receivable, credits, deposits, prepayments and payment intangibles, and all Claims against third parties related to the collectability thereof, other than the Creditor Recovery Note and the 503(B)(9) Note;

(f) all Inventory;

(g) all tangible personal property owned by Seller, including all machinery, equipment, fans, cool cells, feed lines, water lines, stoves, farm products, tools, vehicles, computers, mobile phones, personal digital assistants, computer equipment, hardware, peripherals, information technology infrastructure, telephone systems, furniture, fixtures, furnishings, office supplies, production supplies, other miscellaneous supplies, and other tangible personal property of any kind owned by Seller, including the equipment set forth on Schedule 2.1(g) ("Personal Property");



(h) all rolling stock, cars, trucks, trailers, tractors, forklifts, scrapers, sprayers, other industrial vehicles and other motor vehicles owned by Seller, including the vehicles set forth on Schedule 2.1(h);

(i) all books, records, files and papers of Seller, including equipment logs, operating guides and manuals, and other similar documents (all in the state in which such records and information currently exist); provided, that Seller shall be entitled to retain copies of such books, records, files and papers;

(j) all Intellectual Property Rights, including the Intellectual Property Rights set forth on Schedule 2.1(j);

(k) all advertising and promotional materials, catalogues, price lists, correspondence, mailing lists, customer lists, vendor lists, photographs, production data, sales materials and records, purchasing materials and records, personnel records of employees, billing records, accounting records, other financial records, and sale order files, in each case relating to the Business;

(l) to the extent transferrable without the consent of any Governmental Authority, all Permits relating to the Business, including all Permits set forth on Schedule 2.1(l);

(m) [Intentionally Omitted];

(n) all of Seller's cash and cash equivalents on hand and in banks or other financial institutions, including all checks received prior to the close of business on the Closing Date, whether or not deposited or cleared prior to the close of business on the Closing Date, commercial paper, certificates of deposit and other bank deposits, register cash, petty cash and cash equivalents, other than the Cash Purchase Price;

(o) all of Seller's utility deposits, security deposits, deposits held by contract counter-parties, deposits held by vendors or trade creditors, and other deposits of any kind or nature whatsoever (other than retainers held by Seller's attorneys or other retained professionals);

(p) all insurance policies relating to the Business and all Claims arising under such policies, and all credits, premium refunds, proceeds, causes of action or rights thereunder; provided, however, Seller shall continue to be a named insured on such policies with respect to events that occur and liabilities that arise prior to the Closing Date;

(q) any claim, right or interest of Seller in or to any refund, rebate, reimbursement, abatement or other recovery or credits for all Taxes of any kind, together with any interest due thereon or penalty rebate arising therefrom;

(r) all amounts owed to Seller by any one or more of Seller's Affiliates;

(s) all bank accounts, deposit accounts, securities accounts, brokerage accounts and other accounts holding any cash, cash equivalents or securities belonging to Seller;

(t) all goodwill of Seller relating to the Business;

(u) so far as legally permissible under applicable data protection, medical confidentiality or other applicable Laws (including with a Transferred Employee's written consent), all work and payroll histories, personnel and medical records of each Transferred Employee; and

(v) all assets, properties, interests and rights of Seller of any kind and nature, whether tangible or intangible, and wherever located and by whomever possessed used in, related or incidental to, or otherwise associated with, the Business and not otherwise specifically included in clauses (a) through (v) above, other than Excluded Assets.

2.2. Excluded Assets. Notwithstanding any other provision of this Agreement to the contrary, the Purchased Assets shall not include (the "Excluded Assets"):

(a) any Rejected Contract;

(b) the cash deposit posted in favor of Dreisbach Enterprises to secure its general warehouse lien;

(c) any equity interest in Seller;

(d) any personal property of Seller that is subject to a capital lease not included in the Assumed Contracts;

(e) all rights of Seller arising under this Agreement or in connection with the Transactions;

(f) the Cash Purchase Price;

(g) the Creditor Recovery Note;

(h) the 503(B)(9) Note;

(i) Seller's company seals, membership ledgers or other equity records, minute books and organizational documents;

(j) to the extent that Seller and Pitman close the transactions contemplated by the Pitman Breeder Purchase Agreement prior to the Closing, all assets and rights sold, transferred, assigned or otherwise conveyed to Pitman pursuant to the Pitman Breeder Purchase Agreement; and

(k) all avoidance Claims or other Claims of Seller, and all known or



unknown rights, demands, claims, credits, allowances, rebates, warranties, causes of action or rights of set-off that Seller may have against any third party (including in relation to or in connection with any Taxes), whether arising under the Bankruptcy Code, applicable state Law or otherwise and the proceeds thereof, including actions available to Seller under chapter 5 of the Bankruptcy Code, of whatever kind or nature, and whether asserted or unasserted, provided, however, such claims shall only be asserted by Seller for the purpose of set-off or asserting affirmative defenses and Seller shall not prosecute such claims for the purpose of affirmative recoveries, subject only to the Seller's right to pursue affirmative recoveries against the Non-Released Persons, and Persons who assert claims under Section 503(b)(9) of the Bankruptcy Code, and further subject to the release of such claims pursuant to the proposed settlement contained in the settlement between the Purchaser, Seller and the Committee; provided, however, in the event any Released Purchaser-Related Person faces any claim for indemnification, contribution or otherwise based on an estate cause of action against any party, the estate shall waive any recovery on account of such affirmative claims to the extent necessary to eliminate any such indemnification, contribution or other claim against any Released Purchaser-Related Person and further subject to the release of such claims pursuant to the proposed settlement contained in the settlement between the Purchaser, Seller and the Committee.

2.3. Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, Purchaser agrees, effective at the time of the Closing, to assume, pay, perform and discharge, promptly when payment or performance is due or required, the following liabilities and obligations of Seller (the "Assumed Liabilities"):

(a) all liabilities and obligations of Seller related to or arising under the Assumed Contracts (it being expressly understood that Purchaser is not liable for any liability or obligation arising prior to the Closing Date, or the date an Assumed Contract is assumed after the Closing Date pursuant to Section 2.1(b), as applicable, with respect to an Assumed Contract, if any, except for Cure Costs);

(b) all Cure Costs;

(c) all employee benefit liabilities and obligations that Purchaser is assuming pursuant to Section 5.5;

(d) all of the Tax-related liabilities and obligation that Purchaser is assuming pursuant to Section 8;

(e) any Administrative Claims arising after the Closing Date on account of any Potentially Assumed Contract until such contract has been either assumed and assigned to Purchaser or otherwise rejected;

(f) all liabilities and obligations arising under Section 6.5;

(g) all accounts payable and other trade payables incurred by Seller after the Petition Date in the ordinary course of business that remain unpaid as of the Closing (the "Post-Petition Payables"); provided, however, the Post-Petition Payables shall in no event include any obligations for any fees, expenses or other amounts owed by



Seller to attorneys, consultants, advisors or other “professional persons” (as such term is defined in the Bankruptcy Code) in connection with the Bankruptcy Case, the Transactions or this Agreement, other than ordinary course attorneys and professionals; and

(h) any and all costs and expenses necessary in connection with providing “adequate assurance of future performance” with respect to the Assumed Contracts (as contemplated by Section 365 of the Bankruptcy Code).

2.4. Excluded Liabilities. Notwithstanding any other provision of this Agreement to the contrary, Purchaser is assuming only the Assumed Liabilities and is not assuming, agreeing to pay, perform or discharge when due, or be liable with respect to, any other debt, obligation, duty, liability or responsibility of Seller of any nature or kind whatsoever, including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability. All such other liabilities and obligations shall be retained by, and remain liabilities and obligations of, Seller (all such liabilities and obligations not being assumed being herein referred to as the “Excluded Liabilities”).

2.5. Assumption/Assignment of Contracts and Rights. To the maximum extent permitted by the Bankruptcy Code and subject to Section 2.1(b), the Assumed Contracts shall be assumed by Seller and assigned to Purchaser at the Closing pursuant to Section 365 of the Bankruptcy Code. Purchaser shall have sole responsibility for paying any Cure Costs due in connection with the assumption and assignment of the Assumed Contracts. In the case of licenses, certificates, approvals, authorizations, Permits, Assumed Contracts and other commitments included in the Purchased Assets (a) that cannot be transferred or assigned effectively without the consent of third parties, which consent has not been obtained prior to the Closing (after giving effect to the Approval Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Purchaser, at the cost and expense of Seller, in endeavoring to obtain such consent, and if any such consent is not obtained, Seller shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Purchaser, in all reasonable respects and at Seller’s cost and expense, to provide to Purchaser the benefits thereof in some other manner, or (b) that are otherwise not transferable or assignable (after giving effect to the Approval Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with Purchaser, at the cost and expense of Seller, to provide to Purchaser the benefits thereof in some other manner (including the exercise of the rights of Seller thereunder); provided, that Seller shall not be required to expend unreasonable amounts pursuant to clauses (a) or (b) of this paragraph.

2.6. Possession. Right to possession of the Purchased Assets shall transfer to Purchaser on the Closing Date. Seller shall transfer and deliver to Purchaser on the Closing Date or as promptly as practicable thereafter, such keys, passwords, combinations, lock and safe combinations and other similar items as Purchaser shall require to obtain immediate and full occupation and control of the Purchased Assets, and shall also make available to Purchaser at Seller’s then existing locations all documents in Seller’s possession that are required to be transferred to Purchaser by this Agreement.



2.7. Post-Closing Asset Deliveries. Should Seller or Purchaser, in their reasonable discretion, determine that any Purchased Assets are still in the possession of Seller after the Closing, Seller shall promptly deliver them to Purchaser at Seller's sole cost and expense.

2.8. Prorations. Except for Cure Costs, rent, utilities and other items of expense and income relating to or attributable to the Business shall be prorated between Seller and Purchaser as of the Closing Date. All such obligations due in respect of periods prior to the Closing Date shall be paid in full or otherwise satisfied by Seller, and all obligations due in respect of periods on and after the Closing Date shall be paid in full or otherwise satisfied by Purchaser. Rent shall be prorated on the basis of a thirty (30) day month. After the Closing Date, Purchaser and Seller shall cooperate in calculating any of the prorations under this Section 2.8.

2.9. Purchase Price; Allocation of Purchase Price.

(a) In addition to the assumption of the Assumed Liabilities, in consideration for the sale, transfer and delivery of the Purchased Assets at the Closing, the aggregate purchase price for the Purchased Assets shall consist of (i) a credit bid by Purchaser of TWENTY-SIX MILLION DOLLARS (\$26,000,000) of the secured debt pursuant to the DIP Agreement pursuant to Section 363(k) of the Bankruptcy Code (the "Credit Bid"), (ii) cash in the amount of TWO MILLION NINE HUNDRED THOUSAND DOLLARS (\$2,900,000) plus cash in an amount equal to the amount of accrued professional fees incurred pursuant to the budget attached hereto as Exhibit A (the "Budget") that have not been funded by the Purchaser as of the Closing Date based on each professional's good faith estimate of its expected accrued fees, as of the Closing Date, which shall not exceed the budgeted amount through the Closing Date for any such professional, provided at least two Business Days prior to the Closing Date (collectively, the "Cash Purchase Price"), it being understood that such Cash Purchase Price represents a "carve out" from Purchaser's Liens granted in connection with the DIP Agreement, with such "carve out" amount having been set in accordance with the Budget and the other agreements entered into by the Parties, (iii) the issuance of a secured note to Seller, in the form attached hereto as Exhibit B, in the principal amount of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000) (the "Creditor Recovery Note"), and (iv) the issuance of a secured note to Seller, in the form attached hereto as Exhibit C, in the principal amount of SIX MILLION FOUR HUNDRED THOUSAND DOLLARS (\$6,400,000) (the "503(b)(9) Note" and, collectively with the Creditor Recovery Note, the Credit Bid and the Cash Purchase Price, the "Purchase Price"). The Cash Purchase Price shall be paid by Purchaser to Seller to deposit in a bank account as shall be designated in writing no later than two Business Days prior to the Closing Date by Seller to Purchaser. To the extent that the total amount of finally allowed professional fees, on an aggregate basis, for the period through the Closing Date is less than the aggregate amount paid by Purchaser on account of such professional fees at the Closing, the Seller shall be obligated to refund such amount to Purchaser, and shall remit such payment to Purchaser promptly.



(b) Payments made on the 503(b)(9) Note shall be deposited into the 503(b)(9) Account. Distributions from the 503(b)(9) Escrow Account shall be paid first, to holders of finally allowed claims arising under section 503(b)(9) of the Bankruptcy Code against Seller; second, to Seller in an amount, if any, equal to 50% of the Excess 503(b)(9) Amount; and third, all remaining amounts to Purchaser.

(c) Payments made on the Creditor Recovery Note shall be deposited into the Creditor Recovery Account.

(d) The Purchaser shall determine the allocation of the Purchase Price and Assumed Liabilities among the assets of the Business for all purposes (including financial, accounting and tax) (the "Allocation"). Purchaser and Seller shall each report the federal, state and local income and other Tax consequences of the purchase and sale contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax law) with their respective federal income Tax returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable Law. Seller shall provide Purchaser and Purchaser shall provide Seller with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

2.10. Closing. The closing (the "Closing") of the purchase and sale of the Purchased Assets and assumption of the Assumed Liabilities shall take place at the offices of Felderstein Fitzgerald Willoughby & Pascuzzi LLP, 400 Capitol Mall, Suite 1750, Sacramento, California 95814-4434, no later than five (5) Business Days after satisfaction of the conditions set forth in Section 9 (other than those requiring a delivery, or the taking of other action, at the Closing but subject to the fulfillment of any such condition), or at such other time or place as Purchaser and Seller may agree.

2.11. Deliveries by Seller. At the Closing, Seller will deliver or cause to be delivered to Purchaser (unless delivered previously) the following:

(a) a Bill of Sale, Assumption and Assignment Agreement substantially in form and substance reasonably satisfactory to Purchaser and Seller (the "Assumption and Assignment Agreement"), duly executed by Seller;

(b) duly executed deeds transferring fee simple title to the Acquired Real Property to Purchaser, in form and substance reasonably satisfactory to Purchaser and Seller;

(c) originals (or, to the extent originals are not available, copies) of all Assumed Contracts (together with all material amendments, supplements or modifications thereto) to the extent not already located at the Acquired Real Property;

(d) physical possession of all of the Purchased Assets capable of passing by delivery with the intent that title in such Purchased Assets shall pass by and upon delivery;



(e) a duly executed assignment agreement or agreements transferring the Intellectual Property Rights to Purchaser, in form and substance reasonably satisfactory to Purchaser;

(f) an affidavit from Seller, sworn under penalty of perjury and dated as of the Closing Date, in form and substance required under the Treasury Laws issued pursuant to Section 1445 of the Code stating that Seller is not a foreign person as defined in Section 1445 of the Code;

(g) certificates of title and title transfer documents to all titled motor vehicles included within the Purchased Assets; and

(h) all other documents, instruments and writings reasonably requested by Purchaser to be delivered by Seller at or prior to the Closing pursuant to this Agreement, and reasonably acceptable to Seller.

2.12. Deliveries by Purchaser. At the Closing, Purchaser will deliver or cause to be delivered to Seller (unless previously delivered) the following:

(a) the Cash Purchase Price;

(b) the Creditor Recovery Note;

(c) the 503(b)(9) Note;

(d) the Assumption and Assignment Agreement, duly executed by Purchaser;

(e) a list of Potentially Assumed Contracts, any of which may be designated as Assumed Contracts pursuant to Section 2.1(b);

(f) all other documents, instruments and writings reasonably requested by Seller to be delivered by Purchaser at or prior to the Closing pursuant to this Agreement, and reasonably acceptable to Purchaser; and

(g) such security agreements, deeds of trust, and other security documents related to the Creditor Recovery Note and the 503(B)(9) Note, in form and substance reasonably acceptable to Seller, Purchaser and the Committee.

**3. Representations and Warranties of Seller.** Subject to the terms, conditions and limitations set forth in this Agreement, Seller hereby represents and warrants to Purchaser as of the date of this Agreement as follows:

3.1. Organization. Seller is a limited liability company validly existing under the Laws of the State of California, and has the corporate power and authority to own, lease and operate the Purchased Assets, and to carry on in all material respects the Business as now being conducted. Seller has no direct or indirect subsidiaries and does not own or control, directly or indirectly, any equity interest in any Person.



3.2. Corporate Authorization. The execution, delivery and performance by Seller of this Agreement and the consummation of the Transactions are within Seller's corporate powers and have been duly authorized by all necessary actions on the part of Seller. Subject to entry by the Bankruptcy Court of the Approval Order in the Bankruptcy Case, this Agreement constitutes a valid and binding agreement of Seller that is enforceable in accordance with its terms.

3.3. Governmental Authorization. Except as disclosed on Schedule 3.3, the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby by Seller require no action by or in respect of, or filing with, any Governmental Authority other than (a) consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, and (b) any such action or filing as to which the failure to make or obtain would not have a Material Adverse Effect.

3.4. Noncontravention. Subject to entry by the Bankruptcy Court of the Approval Order in the Bankruptcy Case, the execution, delivery and performance by Seller of this Agreement and the consummation of the Transactions do not and will not (a) violate Seller's articles of organization or operating agreement, as amended, (b) assuming compliance with the matters referred to in Section 3.3, materially violate any applicable Law, (c) except as to matters which would not reasonably be expected to have a Material Adverse Effect, constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation or to a loss of any benefit relating to any Purchased Asset to which Seller is entitled under any provision of any agreement or other instrument binding upon Seller, except for breaches and defaults referred to in Section 365(b)(2) of the Bankruptcy Code, or (d) result in the creation or imposition of any Lien on any Purchased Asset, except for Permitted Liens and Assumed Liabilities or Liens that will be released at or prior to Closing.

3.5. Required Consents. Except for consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, and except as otherwise set forth on Schedule 3.5, there is no agreement or other instrument binding upon Seller requiring a consent or other action by any Person as a result of the execution, delivery and performance of this Agreement, except such consents or actions as would not, individually or in the aggregate, have a Material Adverse Effect if not received or taken by the Closing Date.

3.6. Litigation. Except as disclosed on Schedule 3.6, as of the date hereof, there is no action, suit, investigation or proceeding pending against, or to the Knowledge of Seller, threatened against or affecting, the Purchased Assets before any Governmental Authority which is reasonably likely to have a Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transactions.

3.7. Intellectual Property Rights. Schedule 2.1(j) sets forth an accurate and complete list of all registered Intellectual Property Rights included in the Purchased Assets. Except as set forth on Schedule 3.7, to the Knowledge of Seller, as of the date hereof, there exist no outstanding challenges to the ownership and use by Seller of the Intellectual Property Rights, nor any alleged infringements of such Intellectual Property Rights by third parties. Except as set forth on Schedule 3.7, none of the Intellectual Property Rights included in the Purchased Assets have been licensed by Seller to any other Person. Seller does not license any intellectual



property rights, and no licensing of intellectual property rights is required to operate the Business in the ordinary course of business consistent with past practice.

3.8. Permits. To the Knowledge of Seller, Schedule 3.8 sets forth a list of all Permits required to conduct the Business in a manner consistent with the current practices of Seller. Except as set forth on Schedule 3.8, to the Knowledge of Seller, (a) Seller is in material compliance with the terms and requirements of each such Permit, and (b) no written notice of violation of any such Permit has been received from any Governmental Authority and no proceeding is pending seeking to revoke or limit any such Permits.

3.9. Compliance with Laws and Court Orders. To the Knowledge of Seller, Seller is not in violation of any Law applicable to the Purchased Assets or the conduct of the Business, except for violations which would not reasonably be expected to have a Material Adverse Effect.

3.10. Environmental Matters. Other than as may be set forth in the reports described on Schedule 3.10, Seller has not received written notice from any Governmental Authority or third party of any violation of or failure to comply with any Environmental Laws with respect to the Acquired Real Property which to the Knowledge of Seller remains uncorrected, or of any obligation to undertake or bear the cost of any remediation with respect to the Acquired Real Property which to the Knowledge of Seller remains unperformed.

3.11. Real Property. With respect to each parcel of Acquired Real Property, except as set forth on Schedule 3.11, (a) Seller has fee simple title free and clear of all encumbrances, except for Permitted Liens and Liens that will be released at or prior to Closing; (b) there are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any Person the right of use or occupancy of any portion of such Acquired Real Property; (c) there are no outstanding options, rights of first offer, or rights of first refusal to purchase such Acquired Real Property (other than the right of Purchaser pursuant to this Agreement), or any portion thereof or interest therein; and (d) there are no condemnation or eminent domain proceedings pending or, to the Knowledge of Seller, threatened with respect to all or any part of the Acquired Real Property.

3.12. Sufficiency of and Title to the Purchased Assets. Seller will have at Closing good and marketable title to all of the Purchased Assets. Upon consummation of the Transactions at the Closing, Purchaser will have acquired good, valid and marketable title in and to each of the Purchased Assets, free and clear of all Liens (other than Assumed Liabilities and Permitted Liens) to the maximum extent permitted by Section 363 of the Bankruptcy Code.

3.13. Certain Fees. Except for the fees and expenses of Imperial Capital, LLC, Seller has not incurred any liability for any investment banking fees, brokerage fees, finders' fees, or other similar fees in connection with this Agreement or the Transactions.

3.14. "AS IS" TRANSACTION. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION 3, THE CONSENT OF A PARTY TO THE CLOSING SHALL CONSTITUTE A WAIVER BY SUCH PARTY OF ANY



CONDITIONS TO CLOSING NOT SATISFIED AS OF THE CLOSING DATE, AND FOLLOWING CLOSING SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY PERSONAL OR REAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR WHICH IS THE SUBJECT OF ANY LEASE OR CONTRACT TO BE ASSIGNED TO PURCHASER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR ANY OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS, THE ZONING OF ANY SUCH REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE TITLE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 3, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, UPON THE CLOSING DATE, PURCHASER WILL ACCEPT THE PURCHASED ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

**4. Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller as follows:

4.1. Organization. Purchaser is a trust duly organized and validly existing under the Laws of California and has all trust powers and all material governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted.

4.2. Trust Authorization. The execution, delivery and performance by Purchaser of this Agreement and the consummation of the Transactions are within the trust powers of Purchaser and have been duly authorized by all necessary actions on the part of Purchaser. This Agreement constitutes a valid and binding agreement of Purchaser that is enforceable in accordance with its terms.



4.3. Governmental Authorization. The execution, delivery and performance by Purchaser of this Agreement and the consummation of the Transactions by Purchaser require no action by or in respect of, or filing with, any Governmental Authority other than (a) consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court and (b) any such action or filing as to which the failure to make or obtain would not have a material adverse effect on the Purchaser or its ability to close the Transactions.

4.4. Noncontravention. Neither the execution and delivery of this Agreement nor the consummation of the Transactions will (a) conflict with or result in any breach of any provision of the organizational documents of Purchaser; (b) require any filing with, or the obtaining of any permit, authorization, consent or approval of, any Governmental Authority; (c) violate, conflict with or result in a default (or any event which, with notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, cancellation or acceleration under, any of the terms, conditions or provisions of any note, mortgage, other evidence of indebtedness, guarantee, license, agreement, lease or other contract, instrument or obligation to which Purchaser is a party or by which Purchaser or any of its assets may be bound; or (d) violate any Law applicable to Purchaser, excluding from the foregoing clauses (b), (c) and (d) such requirements, violations, conflicts, defaults or rights (i) which would not adversely affect the ability of Purchaser to consummate the Transactions, or (ii) which become applicable as a result of any acts or omissions by, or the status of or any facts pertaining to, Seller.

4.5. Financing. Purchaser has sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Cash Purchase Price and any other amounts to be paid by it hereunder.

4.6. Litigation. There is no action, suit, investigation or proceeding pending against or, to the knowledge of Purchaser, threatened against or affecting Purchaser before any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transactions.

4.7. Certain Fees. Purchaser has not employed any broker, finder, investment banker, or other intermediary or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees, or other similar fees in connection with this Agreement or the Transactions.

4.8. Inspections; No Other Representations. Purchaser is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of properties and assets such as the Purchased Assets and assumption of liabilities such as the Assumed Liabilities as contemplated hereunder. Purchaser has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Purchaser acknowledges that Seller has given Purchaser reasonable and open access to the key employees, documents and facilities of the Business. Purchaser acknowledges and agrees that the Purchased Assets are being sold on an "as is, where is" basis and Purchaser agrees to accept the Purchased Assets and the Assumed Liabilities in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters and without reliance upon any express



or implied representations or warranties of any nature made by or on behalf of or imputed to Seller, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Purchaser acknowledges that Seller makes no representation or warranty with respect to (a) any projections, estimates or budgets delivered to or made available to Purchaser of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future prospects or operations of the Business or (b) any other information or documents made available to Purchaser or its counsel, accountants or advisors with respect to the Business, except as expressly set forth in this Agreement.

**5. Covenants of Seller.** Seller agrees that:

5.1. Conduct of the Business. From the date hereof until the earlier of the termination of this Agreement pursuant to Section 11.1 or the Closing Date, except (i) as disclosed on Schedule 5.1, (ii) as may be required by the Bankruptcy Court, (iii) for the consequences resulting from the continuation of the Bankruptcy Case, or (iv) as may be required or contemplated by this Agreement, (x) Seller shall conduct the Business only in the ordinary course of business and in a manner consistent with past practice, (y) use its commercially reasonable efforts to preserve intact the Business, keep available the services of its employees, and maintain and preserve the Seller's existing relationships and goodwill with customers, vendors and others having business dealing with Seller, and (z) Seller shall not (except in the ordinary course of business substantially consistent with past practice):

(a) with respect to the Business, acquire a material amount of assets from any other Person;

(b) sell, lease, license or otherwise dispose of any Purchased Assets, or permit, offer, agree or commit any Purchased Asset to become subject, directly or indirectly, to any Lien, except for Permitted Liens;

(c) enter into, amend, terminate, waive any material right under, or otherwise modify any contract, agreement or understanding to which Seller is a party;

(d) hire or terminate any employees, or increase the compensation or benefits to which any employee is entitled;

(e) approve, adopt or expand the coverage of any Employee Benefit Plan;

(f) take any action that would reasonably be expected to cause the failure of any condition contained in Section 9.2 (other than actions taken by Seller in connection with the discharge of its fiduciary duties during the Bankruptcy Case); or

(g) agree or commit to do any of the foregoing.

5.2. Access to Information. From the date hereof until the earlier of the termination of this Agreement pursuant to Section 11.1 or the Closing Date, Seller shall reasonably afford, and shall cause its officers, employees, attorneys and other agents to



reasonably afford, to Purchaser and its counsel, accountants and other representatives, access (at reasonable times during normal business hours) to officers and other employees of Seller for the purposes of evaluating the Business and all properties, books, accounts, records and documents of, or relating to, the Business.

5.3. Accounts Receivable Payments. If Seller receives any payment on account of the Accounts Receivable following the Closing, Seller shall turn over such payment to Purchaser within three (3) Business Days of receipt of such payment. Any payment made pursuant to this Section 5.3 shall be made by wire transfer of immediately available federal funds to an account designated by Purchaser.

5.4. Notices of Certain Events. Seller shall promptly notify Purchaser of:

(a) any notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the Transactions;

(b) any material written communication from any Governmental Authority in connection with or relating to the Transactions; and

(c) the commencement of any actions, suits, investigations or proceedings relating to Seller or the Business that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.6.

5.5. Employee Matters. On the Closing Date, Seller shall terminate all employees employed by Seller as of the Closing in connection with the Business (the "Transferred Employees"), and Purchaser shall make, or shall cause an Affiliate of Purchaser to make, an offer of employment to each Transferred Employee effective as of the Closing, other than employees that Purchaser determines not to make an offer of employment pursuant to written notice delivered by Purchaser to Seller prior to the Closing (such excluded employees, the "Excluded Employees"). Such offers of employment to the Transferred Employees by Purchaser shall be on terms and conditions, including with respect to compensation and benefits, similar in the aggregate to the compensation and benefits provided by Seller to the Transferred Employees as of immediately prior to the date hereof. As of the Closing, Purchaser shall be responsible for the payment and satisfaction of the following contingent wages, benefits and contractual obligations Seller may owe to either the Transferred Employees or the Excluded Employees (but, for the avoidance of doubt, excluding any employees of Seller terminated prior to the Closing Date): all accrued and unpaid wages, ordinary course expense-reimbursement obligations, accrued or unused vacation, holiday and sick-leave time, and severance obligations to the extent that such severance obligations arise from a contract, agreement or understanding, whether or not in writing, which Seller entered into prior to the Petition Date. In addition, as of the Closing, Seller shall assign to Purchaser, and Purchaser shall assume, each Employee Benefit Plan set forth on Schedule 5.5 to the extent such assignment and assumption is permitted by the terms of such Employee Benefit Plan without the consent of any third party and by applicable Law. Purchaser shall also assume liability for all workers' compensation claims of the Transferred Employees and the Excluded Employees existing as of the Closing Date. Notwithstanding any other provision of this Section 5.5, it is expressly understood that Purchaser



shall not assume any obligation or liability relating to any severance, separation pay, change of control or other termination payment, benefit or penalty pursuant to any contract, agreement or understanding, whether or not in writing, which Seller entered into on or after the Petition Date, and any such obligation or liability shall remain the obligation and liability of Seller. Upon request, Seller shall provide Purchaser with such documents, data and information as may reasonably be necessary or advisable, subject to applicable Law, to implement the provisions of this Section 5.5 and to allow Purchaser to assume and administer the Employee Benefit Plans that Purchaser is assuming from Seller pursuant to this Section 5.5. Nothing in this Agreement (including in this Section 5.5) shall be construed as (a) conferring any legal rights upon any Transferred Employee for continuation of employment by Purchaser or any of its Affiliates, (b) requiring Purchaser to implement, or limiting the rights of Purchaser to amend or discontinue, any Employee Benefit Plan, or (c) conferring upon any Transferred Employee any rights or remedies under this Agreement (including under this Section 5.5).

**6. Covenants of Purchaser.** Purchaser agrees that:

6.1. Access. On and after the Closing Date, upon reasonable advance written notice to the Seller or its successor, Purchaser will afford Seller or its successor and their counsel, advisors and other agents reasonable access during normal business hours to Purchaser's properties, books, records, and a member of Purchaser's management designated by Purchaser, to the extent necessary for the Seller's or its successor's financial reporting and accounting matters, employee benefits matters, preparation and filing of any Tax returns, reports or forms, defense of any Tax audit, Claim or assessment, reconciliation of Claims in the Bankruptcy Cases, or in connection with addressing any other issues arising in connection with or relating to the Bankruptcy Case; provided, however, that (x) any such access shall not unreasonably interfere with the conduct of the business of Purchaser, (y) Purchaser shall in no event be required to provide any such access in connection with any action, suit, investigation or proceeding involving Purchaser or its Affiliates, and (z) Purchaser shall in no event be required to disclose any books, records or other material or information that is privileged or that constitutes a trade secret or proprietary information. The Seller or its successor will hold, and will cause its Affiliates, equityholders, officers, directors, managers, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of Law, all confidential documents and information concerning Purchaser or the Business provided to it pursuant to this Section 6.1.

6.2. Title Insurance. Purchaser shall use its commercially reasonable efforts to obtain prior to the Closing (at the sole cost and expense of Purchaser), owner's policies of title insurance for the Acquired Real Property or any portion thereof, including fee title to the applicable Acquired Real Property, subject only to Permitted Liens, containing or accompanied by such affirmative insurance and endorsements as Purchaser shall reasonably require and as are available in the state where the Acquired Real Property is located. Seller will cooperate in good faith with Purchaser with respect to Purchaser's efforts to obtain such owner's policies of title insurance for the Acquired Real Property; provided, however, any owner's affidavit to be executed in connection with such policies shall be in form and substance satisfactory to Seller in its sole discretion.

6.3. [Intentionally Omitted.].



6.4. [Intentionally Omitted.]

6.5. WARN Act. Purchaser shall assume all obligations and liabilities for the provision of notice or payment in lieu of notice and any applicable penalties under the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local Law arising as a result of the termination by Purchaser at or after the Closing of any Transferred Employees or termination by Seller at the Closing of any Excluded Employee (the "Purchaser WARN Act Liabilities"). For the avoidance of doubt, Seller shall retain all obligations and liabilities arising from or relating to any "plant closing" or "mass layoff" (as those terms are defined in the WARN Act) effectuated by Seller prior to the Closing, but only to the extent such obligations and liabilities existed as of the Closing or are solely attributable to actions taken by Seller on or prior to Closing (the "Seller WARN Act Liabilities"). Purchaser hereby agrees to indemnify Seller against and agrees to hold Seller harmless from any and all expenses, losses, Claims and damages incurred or suffered by Seller with respect to the Purchaser WARN Act Liabilities. Seller hereby agrees to indemnify Purchaser against and agrees to hold Purchaser harmless from any and all expenses, losses, Claims and damages incurred or suffered by Purchaser with respect to the Seller WARN Act Liabilities.

**7. Covenants of Purchaser and Seller.** Purchaser and Seller agree that:

7.1. Efforts; Further Assurances. Subject to the terms and conditions of this Agreement, Purchaser and Seller will use their respective commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Laws to consummate the Transactions contemplated by this Agreement; provided, however, Seller shall be entitled to take such actions as are required in connection with the discharge of its fiduciary duties during the Bankruptcy Case. Seller and Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to vest in Purchaser good title to the Purchased Assets or to evidence the assumption by Purchaser of the Assumed Liabilities. Purchaser agrees to cooperate with the Seller, the Committee or their successors in connection with the pursuit of any avoidance Claims or other Claims of Seller excluded pursuant to Section 2.2(j).

7.2. Certain Filings. Seller and Purchaser shall cooperate with one another in good faith (a) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any Assumed Contracts or Intellectual Property Rights, in connection with the consummation of the Transactions, and (b) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

7.3. Public Announcements. Neither Purchaser nor Seller shall make any public announcements or statements concerning the Transactions without the prior written consent of the other Party. Purchaser acknowledges and agrees that Seller may provide copies of this Agreement to parties in interest in the Bankruptcy Case and to those parties to whom Seller determines it is necessary to provide copies in connection with soliciting higher or better bids for the Purchased Assets or as otherwise necessary or desirable in connection with the Bankruptcy



Case. Seller also shall be entitled to file copies with the Bankruptcy Court or as otherwise required by Law and shall be entitled to publish notice of the contemplated Transactions in any newspaper selected by Seller.

7.4. Bankruptcy Issues. Seller and Purchaser shall each use their commercially reasonable efforts, and shall cooperate, assist and consult with each other, to secure the entry of an Order (the “Approval Order”) of the Bankruptcy Court in the Bankruptcy Case (i) approving this Agreement, (ii) to the maximum extent permitted by applicable Law, authorizing the sale of the Purchased Assets pursuant to Section 363 of the Bankruptcy Code free and clear of all Liens (excluding Permitted Liens), including Section 363(k) of the Bankruptcy Code, (iii) authorizing the assumption and assignment of the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code; (iv) authorizing the Transactions; (v) providing a release of any and all known and unknown direct or derivative claims of Seller (including the statutory committee of unsecured creditors) against the Released Purchaser-Related Persons and any of their respective current, former and future, direct and indirect, parents, subsidiaries, affiliates, stockholders, partners, members, equityholders, principals, directors, managers, officers, employees, agents, representatives, attorneys, consultants, independent contractors, predecessors and successors in interest, beneficiaries, assigns (whether by operation of law or otherwise), insurers, and any other persons or entities who acted on their behalf, but in no event shall such release extend to any Non-Released Person; and (vi) providing that this Agreement and the Transactions are undertaken by Purchaser and Seller at arm’s length, without collusion, and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, that Purchaser and Seller are entitled to the protections of Section 363(m) of the Bankruptcy Code, and that the provisions of Section 363(n) of the Bankruptcy Code are not applicable; provided, however, Seller shall be entitled to take such actions as may be required in connection with the discharge of its fiduciary duties in the Bankruptcy Case (including soliciting higher or better offers for the Purchased Assets). In connection with the assumption and assignment of the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, Purchaser shall take all actions required to provide “adequate assurance of future performance” by Purchaser under the Assumed Contracts after the Closing. Purchaser shall cooperate in good faith with Seller in connection with seeking entry of the Approval Order, and Purchaser shall provide evidence (including direct testimony) at the hearing held in the Bankruptcy Case to approve this Agreement sufficient to support determinations that this Agreement and the Transactions are undertaken by Purchaser and Seller at arm’s length, without collusion, and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, that Purchaser and Seller are entitled to the protections of Section 363(m) of the Bankruptcy Code, and that the provisions of Section 363(n) of the Bankruptcy Code are not applicable. Seller and Purchaser shall consult with one another in good faith regarding pleadings that either of them intends to file, or positions either of them intend to take, with the Bankruptcy Court in connection with or that might reasonably affect the Bankruptcy Court’s entry of the Approval Order.

7.5. Corporate Name Change. Promptly following the Closing, Seller shall take all corporate and other actions to change its corporate name to a name which is not confusingly similar to “Zacky Farms, LLC” and thereafter shall not use the name “Zacky Farms, LLC” or any abbreviation or variation thereof.



7.6. Notices. If at any time (a) Purchaser becomes aware of any material breach by Seller of any representation, warranty, covenant or agreement contained herein and such breach is capable of being cured by Seller, or (b) Seller becomes aware of any breach by Purchaser of any representation, warranty, covenant or agreement contained herein and such breach is capable of being cured by Purchaser, the Party becoming aware of such breach shall promptly notify the other Party, in accordance with Section 12.1, in writing of such breach. Upon such notice of breach, the breaching Party shall have until the earlier of (y) ten (10) days after receiving such notice, and (z) the End Date, to cure such breach prior to the exercise of any remedies in connection therewith.

## **8. Tax Matters.**

8.1. Tax Cooperation. Purchaser and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets (including access to books and records) as is reasonably necessary for the preparation and filing of all Tax returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any Claim, suit or proceeding relating to any Tax. Seller and Purchaser shall cooperate with each other in good faith in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Business.

8.2. Transfer Taxes. Any and all sales, use, transfer, recording or other similar taxes or charges (the "Transfer Taxes") assessed at Closing or at any time thereafter on the transfer of any Purchased Assets shall be paid by Purchaser when due and payable. Seller shall cooperate with Purchaser as reasonably requested by Purchaser in connection with Purchaser's payment of such Transfer Taxes.

8.3. Taxes. All of Seller's obligations for the payment of Property Taxes or any other Tax accrued as the Closing shall be assumed by Purchaser and paid by Purchaser when due and payable up to a maximum amount of \$500,000. Seller shall cooperate with Purchaser as reasonably requested by Purchaser in connection with Purchaser's payment of such Taxes.

8.4. Tax Preparation. Purchaser shall, consistent with the information or assistance provided or made available by Seller, timely prepare or cause to be timely prepared and delivered to Seller all federal, state and local income tax returns of Seller for taxable periods commencing on or after January 1, 2012 and that end on or before or that include the effective date of a plan of reorganization under chapter 11 of the Bankruptcy Code or the date of conversion to a case under chapter 7 of the Bankruptcy Code, if applicable, including expending reasonable professional and other fees in connection therewith. Any such tax returns prepared by or at the direction of Purchaser shall be executed and submitted by the appropriate party as designated in the plan of reorganization. Except as otherwise specifically provided in this Agreement, nothing in this Section 8.4 shall be treated as creating an obligation of Seller or Purchaser to pay any taxes due with respect to such taxable periods.

## **9. Closing Conditions.**



9.1. Conditions to Obligations of Purchaser and Seller. The obligations of Purchaser and Seller to consummate the Closing are subject to the satisfaction of the following conditions:

(a) The Bankruptcy Court shall have entered the Approval Order in the Bankruptcy Case, authorizing the Transactions and approving this Agreement under Sections 105(a), 363 and 365 of the Bankruptcy Code, in form and substance acceptable to Purchaser and Seller, each in its reasonable discretion, and as of the Closing Date the Approval Order shall be in full force and effect, shall not then be stayed, and shall not have been vacated or reversed.

(b) The Bankruptcy Court shall have entered one or more Contract Orders as necessary to effect the assumption and assignment of the Assumed Contracts under Section 365 of the Bankruptcy Code, and as of the Closing Date such Contract Orders shall be in full force and effect, shall not then be stayed, and shall not have been vacated or reversed.

(c) All terminations or expirations of waiting periods imposed (and any extension thereof) by any Governmental Authority necessary for consummation of the Transactions contemplated under this Agreement, if any, shall have occurred.

(d) No injunction, stay or similar Order issued by any Governmental Authority shall be in effect that restrains, enjoins, stays or prohibits the consummation of the Transactions.

(e) The Bankruptcy Court shall have entered an Order approving the settlement between the Purchaser, Seller and the Committee in form and substance acceptable to Purchaser, Seller and the Committee, each in its reasonable discretion, and as of the Closing Date such Order shall be in full force and effect, shall not then be stayed, and shall not have been vacated or reversed.

9.2. Conditions to Obligations of Purchaser. The obligation of Purchaser to consummate the Closing is subject to the satisfaction (or waiver by Purchaser) of the following further conditions:

(a) Seller shall have performed in all material respects all of its obligations hereunder required to be performed by Seller on or prior to the Closing Date.

(b) The representations and warranties of Seller contained in Section 3 hereof shall each be true and correct in all material respects (except for such representations and warranties as are qualified by materiality, which representations and warranties shall each be true and correct in all respects) at and as of the Closing Date, as if made at and as of such date (other than such representations and warranties that are expressly made as of a certain date, which each need only be true and correct in all material respects or true and correct, as the case may be, as of such date).

(c) Purchaser's title insurance company shall be prepared to issue to Purchaser a marked title binder without exception, except for Permitted Liens or as



approved by Purchaser, in connection with the transfer of the Acquired Real Property; provided, however, in the event that said title insurance company is not so prepared and such failure to be prepared is due to any factor other than Seller's failure to cooperate pursuant to Section 6.2 hereof, then the title company's failure to be prepared shall not be a condition to the Closing.

9.3. Conditions to Obligations of Seller. The obligation of Seller to consummate the Closing is subject to the satisfaction (or waiver by Seller) of the following further conditions:

(a) Released Purchaser-Related Persons shall have agreed to waive and release all Claims and Liens against Seller and its current directors, managers, officers, employees, attorneys, financial advisors and other professionals.

(b) Purchaser shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date.

(c) The representations and warranties of Purchaser contained in Section 4 hereof shall each be true and correct in all material respects (except for such representations and warranties as are qualified by materiality, which representations and warranties shall each be true and correct in all respects) at and as of the Closing Date, as if made at and as of such date (other than such representations and warranties that are expressly made as of a certain date, which each need only be true and correct in all material respects or true and correct, as the case may be, as of such date).

(d) Seller shall have received all documents it may reasonably request relating to the existence of Purchaser and the authority of Purchaser for this Agreement, all in form and substance reasonably satisfactory to Seller.

**10. Survival; Indemnification.**

10.1. Survival. The (a) representations and warranties of Seller, and (b) covenants and agreements of Seller that by their terms are to be performed before Closing, contained in this Agreement or in any certificate or other writing delivered in connection herewith, shall not survive the Closing. The covenants and agreements of Seller contained herein that by their terms are to be performed after Closing shall survive the Closing in accordance with such terms.

10.2. Indemnification. Each of Purchaser and Seller agrees to indemnify the other with respect to any investment banking fees, financial advisory fees, brokerage fees, finders' fees, or other similar fees which are alleged to be due and payable with respect to the Transactions and which are asserted as a result of the actions of the indemnifying party. There shall be no post-Closing indemnification of Purchaser by Seller with respect to any matter not set forth in this Section 10.2.

**11. Termination.**



11.1. Grounds for Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of Seller and Purchaser with the approval of the Bankruptcy Court;

(b) by Seller or Purchaser, if the Closing shall not have been consummated on or before February 22, 2013 (the "End Date"), unless the Party seeking termination is in breach of its obligations hereunder;

(c) by Seller or Purchaser, if any condition set forth in Section 9.1 is not satisfied, and such condition is incapable of being satisfied by the End Date;

(d) by Purchaser, if any condition set forth in Section 9.2 has not been satisfied, and such condition is incapable of being satisfied by the End Date;

(e) by Seller, if any condition set forth in Section 9.3 has not been satisfied, and such condition is incapable of being satisfied by the End Date; or

(f) by Seller, if (i) Seller executes a definitive agreement with a third party (other than Purchaser) for the acquisition of all or substantially all the Purchased Assets, and (ii) the order entered by the Bankruptcy Court in the Bankruptcy Case approving such definitive agreement becomes a Final Order.

The Party desiring to terminate this Agreement pursuant to this Section 11.1 (other than pursuant to Section 11.1(a)) shall give notice of such termination to the other Party in accordance with Section 12.1.

11.2. Effect of Termination. If this Agreement is terminated as permitted by Section 11.1, such termination shall be without liability of any Party (or any stockholder, trustee, beneficiary, director, officer, employee, agent, consultant or representative of such Party) to the other Party to this Agreement, except as expressly provided in Section 11.4. The provisions of Sections 10.2, 11.2, 11.3 and 11.4, and Section 12, shall survive any termination hereof pursuant to Section 11.1.

11.3. Expenses. Except as otherwise set forth expressly herein, all costs and expenses incurred in connection with this Agreement or the Transactions shall be paid by the Party incurring such cost or expense.

11.4. Exclusive Remedies. Purchaser and Seller acknowledge and agree that if this Agreement is terminated pursuant to Section 11.1, the provisions of Section 11.2 and this Section 11.4 set forth the sole and exclusive remedies of the Parties. Purchaser and Seller further acknowledge and agree that if this Agreement is terminated by Seller pursuant to either (y) Section 11.1(e), or (z) Section 11.1(b) (provided that any of the conditions of Section 9.3 have not been satisfied), then, in addition to Seller's remedies set forth in Section 11.2, Seller shall also retain any and all claims, rights, remedies, prayers for damages and causes of action, whether arising in Law or in equity, arising from or related to any breach of this Agreement by Purchaser, including the right to specific performance and all rights, remedies and claims

available to the Debtor pursuant to that certain settlement by and among Seller, Purchaser and the unsecured creditors committee (the "Committee") dated as of the date of this Agreement.

**12. Miscellaneous.**

12.1. Notices. All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Purchaser, to:

The Robert D. Zacky and Lillian D. Zacky Trust  
149 S. Barrington Ave., Suite 720  
Los Angeles, California 90049  
Attention: Lillian D. Zacky

with a copy to (which shall not constitute notice):

The Lobel Firm, LLP  
840 Newport Center Dr, Suite 750  
Newport Beach, California 92660  
Attention: William N. Lobel  
Fax: 949-999-2870

if to Seller, to:

Zacky Farms, LLC  
1111 Navy Street  
Stockton, California 95206  
Attention: Keith Cooper  
Fax: 559-443-2706

with copies to (which shall not constitute notice):

FTI Consulting  
1201 West Peachtree Street  
Suite 500  
Atlanta, Georgia 30309  
Attention: Keith Cooper  
Fax: 404-460-6230

King & Spalding LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309  
Attention: Paul Ferdinands  
Fax: 404-572-5131

Felderstein Fitzgerald Willoughby & Pascuzzi LLP



400 Capitol Mall  
Suite 1450  
Sacramento, California 95814  
Attention: Donald W. Fitzgerald  
Fax: 916-329-7435

Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, NJ 07068  
Attn: Jeffrey D. Prol  
Facsimile: (973) 597-2491

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

12.2. Waivers. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative.

12.3. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that no Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the other Party. Notwithstanding the foregoing, the Purchaser may assign this Agreement and all of its rights and obligations hereunder to one or more of its Affiliates (each, a "Permitted Purchaser Assignee") without the consent of Seller, in which case, the term "Purchaser" hereunder shall mean the Permitted Purchaser Assignee(s), unless the context requires a different meaning, but in no event shall any such assignment relieve the Purchaser from any obligation under this Agreement to consummate the Transactions.

12.4. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of California and any applicable provisions of the Bankruptcy Code, without regard to the principles of conflicts of Law that would provide for application of another Law.

12.5. Jurisdiction.

(a) Prior to the closing of the Bankruptcy Case, the Parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions shall be brought exclusively in the Bankruptcy Court, and each of the Parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any



such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court or that any such suit, action or proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 12.1 shall be deemed effective service of process on such Party.

(b) After the closing of the Bankruptcy Case, except as otherwise expressly provided in this Agreement, the Parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions may be brought in any court having subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of California, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 12.1 shall be deemed effective service of process on such Party.

12.6. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS.

12.7. No Third Party Beneficiaries. No provision of this Agreement is intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.

12.8. Entire Agreement; Amendments; Counterparts. This Agreement (including the Schedules and Exhibits hereto) sets forth the entire agreement among the Parties with respect to the subject matter hereof and may be amended only by a writing executed by Purchaser and Seller. This Agreement may be executed in counterparts, each of which when taken together shall constitute an original. This Agreement shall become effective when each Party hereto shall have received a counterpart hereof signed by the other Party hereto.

12.9. Headings; Interpretation. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any provisions of this Agreement.



12.10. Disclosure Schedules. The Parties acknowledge and agree that (i) the Schedules to this Agreement may include certain items and information solely for informational purposes for the convenience of Purchaser and (ii) the disclosure by Seller of any matter in the Schedules shall not be deemed to constitute an acknowledgment by Seller that the matter is required to be disclosed by the terms of this Agreement or that the matter is material. If any Schedule discloses an item or information, the matter shall be deemed to have been disclosed in all other Schedules, notwithstanding the omission of an appropriate cross-reference to such other Schedules.

12.11. Attorneys' Fees. If either Party brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, then the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all fees, costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

12.12. Severability. Should any provision, or any portion thereof, of this Agreement for any reason be held illegal, invalid or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions, or portions thereof, of this Agreement, which other provisions, and portions, shall remain in full force and effect, and the application of such illegal, invalid or unenforceable provision, or portion thereof, to persons or circumstances other than those as to which it is held illegal, invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by Law.

12.13. Risk of Loss. Prior to the Closing, all risk of loss, damage or destruction to all or any part of the Purchased Assets shall be borne exclusively by Seller; provided, however, that, in the event of the Closing, Purchaser shall be entitled to receive any insurance proceeds payable therefor.

12.14. Seller Release. As of the Closing, Seller, on behalf of itself and its estate (the "Seller Releasors"), hereby waives, sets aside, discharges, settles, compromises and releases any and all claims, causes of action, rights or remedies of any kind or nature, which they have, may have or could have asserted against Released Purchaser-Related Persons or any of their respective direct or indirect Affiliates or the former or present trustees, beneficiaries, equityholders, directors, managers, officers, employees, attorneys, financial advisors or other professionals of Purchaser or its Affiliates, but in no event shall such release extend to any Non-Released Person; provided, however, the Seller Releasors are not releasing or waiving (and shall not be deemed to have released or waived) any Claims, causes of actions, rights or remedies related to Purchaser's obligations set forth herein (including any payment obligations evidenced by the Creditor Recovery Note or the 503(B)(9) Note).

To the extent that either of the foregoing releases are releases as to which Section 1542 of the California Civil Code or similar provisions of other applicable law applies, it is the intention of each of the Seller Releasors that such release shall be effective as a bar to any and all causes of action of whatsoever character, nature in kind, known or unknown, suspected or unsuspected, herein and above specified to be so barred. In furtherance of this intention, the Seller Releasors hereby expressly waive any and all rights and benefits conferred upon them by the provisions of

Section 1542 of the California Civil Code or similar provisions of other applicable law, and acknowledge that Section 1542 of the California Civil Code provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

*[Remainder of Page Intentionally Left Blank.]*



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

THE ROBERT D. ZACKY AND LILLIAN D. ZACKY  
TRUST U/D/T DATED JULY 26, 1988

By: Lillian D. Zacky  
Name: LILLIAN D. ZACKY  
Title: TRUSTEE

ZACKY FARMS, LLC

By: Keith F. Connor  
Name: KEITH F. CONNOR  
Title: SOLE MANAGER & CEO



### Schedules

Delivered Pursuant to the Terms  
and Conditions of the Asset Purchase Agreement

**February 6, 2013**

These Schedules (these "Schedules") are being furnished in connection with the execution and delivery of that certain Asset Purchase Agreement (the "Agreement"), dated as of the date hereof, by and between The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988, a California trust ("Purchaser"), and Zacky Farms, LLC, a California limited liability company ("Seller"), pursuant to which Purchaser has agreed to purchase certain assets related to certain poultry operations conducted by Seller. Unless the context otherwise requires, all capitalized terms used in these Schedules shall have the respective meanings ascribed to them in the Agreement.

The representations and warranties of Seller set forth in the Agreement are made and given subject to the disclosures in these Schedules. The disclosures made in these Schedules relate to any and all of the representations and warranties made by Seller in the Agreement. If any Schedule discloses an item, matter or information, such item, matter or information shall be deemed to have been disclosed in all other Schedules, notwithstanding the omission of an appropriate cross-reference to such other Schedule(s).

Matters reflected in these Schedules are not necessarily limited to matters required by the Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. In no event shall the inclusion of any such additional matter in these Schedules be deemed or interpreted to broaden Seller's representations, warranties, covenants or agreements contained in the Agreement. The mere inclusion of an additional item in these Schedules shall not be deemed an admission by Seller that such item represents a material exception or fact, event, or circumstance or that such item is reasonably likely to result in a Material Adverse Effect.

Any attachments to these Schedules form an integral part of these Schedules and are incorporated by reference for all purposes as if set forth fully herein. These Schedules supersede and replace any other disclosure schedules previously provided to Purchaser. These Schedules may be supplemented or amended by Seller or Purchaser to the extent permitted by the Agreement.

**Schedule 1.1(x)**  
**Grower Contracts**

Grower Name	Address	City	State	Zip	Type	Date Contract was Entered Into	Cure Amount
Doug Lind Ranch	22133 N. Devries Road	Lodi	CA	95242	Chicken	January 27, 2012	\$0
Ron Lind Ranch	14190 N. Davis Road	Lodi	CA	95242	Chicken	January 27, 2012	\$0
Fred Schwabenland Ranch	10465 S. Westlawn	Fresno	CA	93706	Turkey	March 5, 2012	\$0
G & R Roush Turkey Ranch	20256 Everett Avenue	Riverdale	CA	93656	Turkey	February 8, 2012	\$0
Ida Potter	15956 S. East Avenue	Caruthers	CA	93609	Turkey	February 8, 2012	\$0
Leroy Fite	19109 Road 20	Waukena	CA	93274	Turkey	February 9, 2012	\$0
Ron Froese Ranch	22687 E. Floral Avenue	Dinuba	CA	93618	Turkey	March 19, 2012	\$0
Tom Fry Ranch	12594 Avenue 22-1/2	Chowchilla	CA	93610	Turkey	February 8, 2012	\$0
Dalena Farms Inc.	7636 Road 34	Madera	CA	93638	Turkey	February 8, 2012	\$0
Cross Creek Turkey Farm	8700 Fargo Avenue	Hanford	CA	93230	Turkey	March 19, 2012	\$0



**Schedule 2.1(a)**  
**Acquired Real Property**

<b>Facility Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>
Stockton Plant APN 163-260-07 (15.17 acres)	1111 Navy Drive	Stockton	CA	95206
Grower Ranch (18 <sup>th</sup> ) APN 026-060-007 (78.79 acres)	17432 18 <sup>th</sup> Avenue	Lemoore	CA	93245
Grower Ranch (Kent) APN 024-170-073 (77.19 acres)	19774 Kent Avenue	Lemoore	CA	93245
Grower Ranch (Holm) APN 024-170-020 (40 acres)	16395 & 16485 19 <sup>th</sup> Avenue	Lemoore	CA	93245
Grower Ranch (6 <sup>th</sup> Brood, Red and Gray) APNs 046-270-004 & 035 (400 acres)	43501 6 <sup>th</sup> Avenue	Corcoran	CA	93212
Grower Ranch (Brawley) APN 053-090-37 (80 acres)	19010 & 19012 S. Brawley Avenue	Riverdale	CA	93609
Grower Ranch (Experimental) APN 043-050-15 (20 acres)	590 W. Kamm Avenue	Fresno	CA	93725
Grower Ranch (G & H) APN 035-060-90 (80 acres)	8351 McMullin Grade	Fresno	CA	93725
Warehouse APN 458-240-09	By Fresno Mill	Fresno	CA	
Vacant Land 57 APN 028-030-032	Approximately 58.30 acres open land located in Hanford, CA	Hanford	CA	
Turkey Processing Plant APN 480-040-06S (4.98 acres)	2222 & 2240 S. East Avenue	Fresno	CA	93721
Empire Facility APN 480-040-11 (11.53 acres)	2950 E. California Street	Fresno	CA	93721
Turkey Hatchery APN 023-060-44S (3.99 acres)	1486 S. Industrial Way	Kerman	CA	93630
Litter Yard APN 055-310-29 (22.56 acres)	18804 S. Camden Avenue	Laton	CA	93242



Facility Name	Address	City	State	ZIP
Garage APN 458-250-02 (2.18 acres)	190 N. Thorne Avenue	Fresno	CA	93706
Mill Annex APN 458-240-09 (.48 acres)	245, 249, 251 North H Street	Fresno	CA	93701
Corporate Offices APN 468-040-07S (9.57 acres)	1888 & 2020 S. East Avenue	Fresno	CA	93721
Warehouse APN 480-040-07 (2.97 acres)	2272 S. East Avenue	Fresno	CA	93721
Breeder Ranch (Alta) APNs 373-360-01&04 (38.62 acres)	22133 & 22141 E. South Avenue	Reedley	CA	93654
Breeder Ranch (Central Lay) APN 025-110-46 (40 acres)	12591 W. Central Avenue	Kerman	CA	93630
Breeder Ranch (Central Dark) APN 025-110-29 (39.1 acres)	4220 S. Howard Avenue	Kerman	CA	93630
Breeder Ranch (Hayes) APN 041-120-43 (39.72 acres)	12233 & 12229 S. Hayes Avenue	Caruthers	CA	93609
Breeder Ranch (Simerly) APN 056-110-24 (35.58 acres)	4511 & 4515 E. Simerly Avenue	Laton	CA	93242
Breeder Ranch (Smith Mountain) APNs 373-130-28 & 29 (54.38 acres)	9760 S. Hill Avenue	Orange Cove	CA	93646
Breeder Ranch (Smith Dark) APN 373-160-01 (19 acres)	25137 E. Dinuba Avenue	Orange Cove	CA	93646
Breeder Ranch (Twin Palms) APN 333-070-50 (141.96 acres)	20090 E. Central Avenue	Reedley	CA	93654
Breeder Ranch (Campbell Mountain) (Included in Twin Palms APN and acreage)	20364 E. Central Avenue	Reedley	CA	93654
Vacant Land APNs 458-240-33 and 458-240-10		Fresno	CA	93721

**Schedule 2.1(b)**  
**Assumed Contracts**

**SUPPLY CONTRACTS**

<b>Vendor Name</b>	<b>Type</b>	<b>Contract Commencement Date</b>
AT&T Mobility National Accounts LLC	AT&T Corporate Digital Advantage Agreement Version 8-A	10/29/12
Shell Energy North America (US), L.P.	Energy Sales Agreement	10/26/12
Shell Energy North America (US), L.P.	Base Sales Agreement	10/26/12

**OTHER CONTRACTS**

<b>Vendor Name</b>	<b>Type</b>	<b>Contract Commencement Date</b>
San Joaquin Valley Air Pollution Control District	Heavy-Duty Program Contract	10/8/12
Farmer Boys Food, Inc.	Sales Agreement	12/19/12
Dah Chong Hong	Sales Agreement	12/13/12
Gene Hull Trucking, Inc.	Trucking Agreement	12/10/12

**All Grower Contracts set forth on Schedule 1.1(x).**



**Schedule 2.1(g)**  
**Specified Included Equipment**

PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Stockton Facility	PUMP, MARLEN OPTI 200	181,438
Processing	Stockton Facility	STUFFER, POLY CLIP	166,891
Processing	Stockton Facility	OVEN #3,BATCH - LARGE	153,194
Processing	Stockton Facility	OVEN#4 RECONDITION	150,456
Processing	Stockton Facility	WEBER SLICER COMPUT CONTR	121,553
Processing	Stockton Facility	MULTIVAC PACKAGING MACHIN	64,862
Processing	Stockton Facility	HOPPER,MARLEN "A"STYLE	60,518
Processing	Stockton Facility	SAUSAGE LINKING LINE	55,823
Processing	Stockton Facility	POLYCLIP SIZER 8700	54,168
Processing	Stockton Facility	CONVEYOR, PACKOUT	45,496
Processing	Stockton Facility	HITEC LINER #4	44,796
Processing	Stockton Facility	HITEC LINKER #2	44,796
Processing	Stockton Facility	HITEC LINER #3	44,796
Processing	Stockton Facility	HITEC LINER #1	44,796
Processing	Stockton Facility	EVAP UNITS (8)CONVERSION	39,835
Processing	Stockton Facility	PACKAGER,RAPIDPAK	39,722
Processing	Stockton Facility	CHAIN, RAPIDPAK,LINE 11	39,508
Processing	Stockton Facility	PLANET FRANK LOADER	36,679
Processing	Stockton Facility	MAHAFFEY,RBLD FA#67166	32,475
Processing	Stockton Facility	PACKAGER,RAPIDPAK,ATDL	32,102
Processing	Stockton Facility	SAUSAGE DIE SET MULTIVAC	31,824



PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Stockton Facility	PUMP, VACUUM VANE	30,783
Processing	Stockton Facility	WATER SOFTNER 3TANK SYS	30,169
Processing	Stockton Facility	GRIPPER ROLLER CHAIN	30,167
Processing	Stockton Facility	OIL BROWNER/FRYER	29,889
Processing	Stockton Facility	SMOKE TRITRATION SYSTEM	29,216
Processing	Stockton Facility	MARLEN DEPOSITOR DUALHEAD	28,290
Processing	Stockton Facility	PLANET FRANK LOADER, ADTL	28,174
Processing	Stockton Facility	PACKAGING MACHINE CRYOVAC	27,574
Processing	Stockton Facility	OVEN CHAIN #2 BOTTOM	27,159
Processing	Stockton Facility	AIR CURTAINS (2)	26,432
Processing	Stockton Facility	PACKOUT LINE MODIFICATION	25,669
Processing	Stockton Facility	VACUUM PUMP	25,384
Processing	Stockton Facility	CONDENSATE PANS,INSTL	25,096
Processing	Stockton Facility	COZZINI EMULSIFIER	24,693
Processing	Stockton Facility	WEILER UPGRADE	23,896
Processing	Stockton Facility	OVEN UPGRADE	23,199
Processing	Stockton Facility	HAM MOLDS	23,165
Processing	Stockton Facility	OVEN CHAINS,CONTINUOUS	22,993
Processing	Stockton Facility	RAIL,OH,RAW FAB,UPGR67257	21,236
Processing	Stockton Facility	BOILER BURNER - RETROFIT	20,018
Processing	Stockton Facility	CONTINUOUS OVEN INTERIOR	19,820
Processing	Stockton Facility	VACUUM PUMP W/MOTOR	19,135

PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Stockton Facility	SUREFLOW PACKAGING SYSTEM	18,617
Processing	Stockton Facility	MOD 80581 STEINFRYER	18,515
Processing	Stockton Facility	BOILER FOOTINGS	17,899
Processing	Stockton Facility	OVER CHAIN #1 BOTTON	17,675
Processing	Stockton Facility	CONTROL SYSTEM,KSIINJECTO	17,588
Processing	Stockton Facility	HAM MOLD RACKS	16,762
Processing	Stockton Facility	PALLETS, S/S	16,755
Processing	Stockton Facility	FANS, WALL MOUNT	16,241
Processing	Stockton Facility	BATCH SAUSAGE RACKS	15,967
Processing	Stockton Facility	CHAIN ROLLER,RAPID PAK	15,469
Processing	Stockton Facility	RIETSCHLE VAC PUMP	15,396
Processing	Stockton Facility	PALLET JACK,WALKIE RIDER	15,302
Processing	Stockton Facility	MOTOR 250HP	15,059
Processing	Stockton Facility	PLANET SERVO LOADER 05498	14,928
Processing	Stockton Facility	PLANET SERVO LOADER 05398	14,928
Processing	Stockton Facility	PEELER #2 TOWNSEND	14,607
Processing	Stockton Facility	PEELER #1 TOWNSEND	14,607
Processing	Stockton Facility	DOOR SEALS,SHIP DOCK (8)	14,380
Processing	Stockton Facility	HITEC PUMP UNIT	14,253
Processing	Stockton Facility	CONDENSATE TANK	13,794
Processing	Stockton Facility	CHILLER UPGRADE	13,511
Processing	Stockton Facility	BOOSTER PUMP	13,008



PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Stockton Facility	TOTE STANDS	12,996
Processing	Stockton Facility	MOTOR & STARTER COMPRES#2	12,973
Processing	Stockton Facility	PUMP,MEAT-FULLASSY WHINGE	12,680
Processing	Stockton Facility	KSI PICKLE INJECTOR	11,755
Processing	Stockton Facility	SLICE-N-TACT BH-15	11,691
Processing	Stockton Facility	MINCEMASTER RBLD 67783	11,079
Processing	Stockton Facility	FORKLIFT,KOMATSU,2005,LPG	11,076
Processing	Stockton Facility	BOILER,REFRACTORY,CB	11,040
Processing	Stockton Facility	VEMAG 500 ROBOT STUFFER	11,003
Processing	Stockton Facility	SAFETY CIRCUIT UPGRADE	10,977
Processing	Stockton Facility	DURAWEIGH O/H FLOOR SCALE	10,881
Processing	Stockton Facility	PADK COOLER O/H RAIL UPGR	10,759
Processing	Stockton Facility	MAHAFFY HARDER 730	10,669
Processing	Stockton Facility	REBUILD MAHAFFY HARDER	10,515
Processing	Stockton Facility	PUMP,FOR HOPPER #3	10,491
Processing	Stockton Facility	METAL DETECTOR UPGRADE	10,366
Processing	Stockton Facility	BIRD CARMELIZER	10,331
Processing	Fresno Facilities	CHUBMAKER 4000	396,568
Processing	Fresno Facilities	RAYMOND FORKLIFT	227,169
Processing	Fresno Facilities	HEAT EXCHANGER,SCRAP SURF	189,350
Processing	Fresno Facilities	POSS GRINDER	153,302
Processing	Fresno Facilities	OSSID 750E OVERWRAP SYSTM	145,767



PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Fresno Facilities	SCALE,IN LINE,OSSID	93,122
Processing	Fresno Facilities	SLICER,SCALLOPINI	88,638
Processing	Fresno Facilities	NUTEC PATTY MACHINE	67,933
Processing	Fresno Facilities	DAPEC THIGH DEBONER	65,528
Processing	Fresno Facilities	VEMAG HP-10-C	63,100
Processing	Fresno Facilities	TOP SEALER,ROSS IN-PACK	56,130
Processing	Fresno Facilities	VEMAG HP-10-C VAC STUFFER	54,504
Processing	Fresno Facilities	TENDER TENDON PULLER	53,679
Processing	Fresno Facilities	BOILER/IRON FIREMAN 100HP	37,633
Processing	Fresno Facilities	PROFAT SS 120V/240V	33,067
Processing	Fresno Facilities	FEATHER AUGER	31,232
Processing	Fresno Facilities	LIVEHANG PLATFORM	28,546
Processing	Fresno Facilities	BONE-IN INJECTOR	27,629
Processing	Fresno Facilities	OSSID END SEAL SHRINK	26,810
Processing	Fresno Facilities	ROSS TOP SEALER UPGRADE	26,025
Processing	Fresno Facilities	SEYDELMAN GRINDER UPGR	25,360
Processing	Fresno Facilities	GUT AUGER	24,756
Processing	Fresno Facilities	METAL DETECTOR, ERIEZ	24,558
Processing	Fresno Facilities	FRICK SCREW COMPRESSOR	24,247
Processing	Fresno Facilities	DANSENSOR UNIT,TRAYPACK	24,191
Processing	Fresno Facilities	BOILERS - TKY PLANT	23,795
Processing	Fresno Facilities	GAS ANALYZER,DANSENSOR	23,050

PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Fresno Facilities	APV #4	21,764
Processing	Fresno Facilities	BATTERY RAYMOND LIFT	21,382
Processing	Fresno Facilities	ICE MAKER REBUILD	21,359
Processing	Fresno Facilities	METAL DETECTOR,EZ TEL DSP	21,340
Processing	Fresno Facilities	CHAIN,SL348,EVIS	20,619
Processing	Fresno Facilities	HURST 50HP PRESSUR VESSEL	20,387
Processing	Fresno Facilities	DETECTOR,METAL,EZ TEC	20,212
Processing	Fresno Facilities	CONVEYOR	19,986
Processing	Fresno Facilities	PRINTER,INK JET	19,494
Processing	Fresno Facilities	BAGGING LINE CONVEYORS	17,441
Processing	Fresno Facilities	FORKLIFT 2007 MITSUBISHI	17,234
Processing	Fresno Facilities	SIMMONS SF-7002 STUNNER	17,116
Processing	Fresno Facilities	CLIPPER,ROTAMATIC,SS	16,960
Processing	Fresno Facilities	COMPRESSOR #6	16,414
Processing	Fresno Facilities	CO2 TANK AND SLAB	15,812
Processing	Fresno Facilities	LABEL APPLICATOR,CASE END	15,491
Processing	Fresno Facilities	METAL DETECTOR EZ TEC	15,195
Processing	Fresno Facilities	TRUCK HOIST,GEARS,RACKS	15,145
Processing	Fresno Facilities	TRAYPACK REFRIG. SYSTEM	15,021
Processing	Fresno Facilities	ALASKA GAS FLUSH OVWRP	14,609
Processing	Fresno Facilities	TRUCK HOIST UPGRADE	14,327
Processing	Fresno Facilities	OSSID AUTO-INDEXER	14,304



PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Fresno Facilities	TOWNSEND SKINNER	14,290
Processing	Fresno Facilities	BATTERY FORKLIFT	14,142
Processing	Fresno Facilities	CURTAINS, SAFETY	13,950
Processing	Fresno Facilities	KILL LINE CHAIN	13,574
Processing	Fresno Facilities	SWITCH,SAFETY,MAIN	13,133
Processing	Fresno Facilities	CLIPPER,TIPPER TIE	13,129
Processing	Fresno Facilities	PALLET JACK,CROWN 2006	13,085
Processing	Fresno Facilities	SAWS, KFC, CKN	12,894
Processing	Fresno Facilities	PUMP, WAUKESHA	12,802
Processing	Fresno Facilities	VE-MAG HOPPER ASSEMBLY	12,611
Processing	Fresno Facilities	MORRIS CHILLER #3	11,885
Processing	Fresno Facilities	MORRIS CHILLER #2	11,885
Processing	Fresno Facilities	TRASH SUM PUMP	11,736
Processing	Fresno Facilities	TOE TAG SERVER UPGRADE	11,653
Processing	Fresno Facilities	MORRIS CHILLER #1	11,589
Processing	Fresno Facilities	CHAIN LINK ASSYK ASSY	11,245
Processing	Fresno Facilities	FORKLIFT, 2002,MITSUBISHI	10,944
Processing	Fresno Facilities	BLOOD PUMP DIAPHRAGM	10,901
Processing	Fresno Facilities	BLISSMATIC BOXFORMER LINE	10,820
Processing	Fresno Facilities	BATTERY, PALLET JACK	10,792
Processing	Fresno Facilities	SANITATION SYSTEM	10,732
Processing	Fresno Facilities	PRINTER,CIMA-M INKJET	10,645



PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Processing	Fresno Facilities	COMPRESSOR REBILD	10,056
Hatchery	Kerman Hatchery	(8) HATCHERS TVH66-120	134,099
Hatchery	Kerman Hatchery	(2) INCUBATORS A18T-120	90,263
Hatchery	Kerman Hatchery	CHILLED WATER PIPING	43,041
Hatchery	Kerman Hatchery	HATCHER	21,644
Hatchery	Kerman Hatchery	TANK, WASTE W/OSHA LADDER	16,350
Hatchery	Kerman Hatchery	EGG FLATS (165 EGG)	16,153
Hatchery	Kerman Hatchery	EGG FLATS (120 EGG)	16,114
Hatchery	Kerman Hatchery	REFRIG COOLING SYS 3STAGE	14,152
Hatchery	Kerman Hatchery	VENTILATION	11,490
Hatchery	Kerman Hatchery	HOT WATER BOILER	10,974
Grower	18th Ave	CURTAIN 3500FT SIDEWALL	16,543
Grower	6th Ave	MACHINES/MOTORS	149,057
Grower	6th Ave	CURTAINS,WALL	65,866
Grower	6th Ave	TANK,PRESSURE	35,648
Grower	6th Ave	STOVES BROODER	21,820
Grower	6th Ave	MASSEY FERG TRACTOR 2006	17,370
Grower	6th Ave	CUMBERLAND GROWOUT EQUIPM	15,612
Grower	6th Ave	MASSEY FERGUSON TRACTOR	13,281
Grower	Brawley	RANGE PENS	26,393
Grower	Brawley	BROODER STOVES (94)	12,864
Grower	Experimental	TRACTOR,FARMS,2WD,2009	13,282

PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Grower	G&H	FEED LINE SYSTEM	160,092
Grower	G&H	AUTO FEED SYSTEM	91,025
Grower	G&H	ELECTRICAL BOXES	56,029
Grower	G&H	FORD TRACTOR	40,040
Grower	G&H	CURTAIN REPLCMNT	39,868
Grower	G&H	WATER SYSTEM UPGRADE	36,513
Grower	G&H	FOGGER SYSTEM	35,904
Grower	G&H	MASSEY FERGUSON 492-4	30,556
Grower	G&H	FAN REPLACEMENT	29,860
Grower	G&H	BROODER STOVES	24,516
Grower	G&H	CURTAIN UPGRADE	18,437
Grower	G&H	SIDEWALL NETTING	16,750
Grower	G&H	TANK, 2100 GAL (WEST WELL	14,286
Grower	Holm	BROODER STOVES (155)	24,312
Grower	Holm	#8660 MASSEY FERGUSON	15,501
Grower	Kent	CURTAINS,3500FT SIDEWALL	15,254
Grower	Kent	RANGE PENS	10,438
Other	Corp G&A	HEMICELL ENZYME AP EQ	136,468
Other	Fresno Fryer Overhead - Field Ops	FORKLIFT,MANITOU	23,343
Other	Litter Sales and Storage	KOMATSU WHEEL LOADER 1999	79,852
Other	Litter Sales and Storage	KOMATSU MAJOR RPR	14,079
Other	Quality Control Div	PROTEIN ANALYZER	23,455



PROPERTY CATEGORY	PROPERTY DESCRIPTION	DETAIL	NBV
Other	Quality Control Div	VIDAS - MINI	16,955
Other	Quality Control Div	SOXTEC SOLVENT EXTRAC SYS	16,061
Other	Turkey Div Contract Overhead	TRACTOR,70DT,DEUTZ FAHR	19,382
Other	Turkey Div Contract Overhead	WINDROWER,LEWIS POULTRY	17,847
Breeder	Central	NEST,WOODEN,W/TRAPS,200	26,633
Breeder	Simerly	COOL CELL,BARN 2 & 3	41,992
Breeder	Smith Mtn	FANS,SIDEWALL 48"	13,695



**Schedule 2.1(h)  
Vehicles**

EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
0038	2008 SUV	CHEVROLET	EQUINOX FW	2CNDL13F186008170	6DXH248	G. HENDERSON	SALES
0111	2011 CHEVROLET TA	CHEVROLET	TAHOE 2WD	IGNSCAE00BR249452	6SGK388		G&A
0115	2005 TAHOE SUV	CHEVY	TAHOE C150	IGNEC13T55J133189	5MBG593	TC TAN	HATCHERY
0127	2007 4 DOOR SEDAN	CHEVROLET	IMPALA	2G1WDS8C879117392	6CEX641	LOUIE MASUCCI	SALES
0216	2006 MID-SIZE P/U	CHEVROLET	COLORADO	IGCCS148268289258	8J48960	HUNTSMAN-E. R	GROWOUT
289	1999 WHEEL LOADER	KOMATSU	WA-450-3	50227		LITTER YARD	LITTER
0410	2000 S-10 PICKUP	CHEVROLET	S-10 EXT C	IGCCS195XYK299038	6J18213	GROWOUT	GROWOUT
0490	2000 S-10 PICKUP	CHEVROLET	S-10	IGCCS144XYK141880	6H48619	GRAYSON CKN	FRESNO FRYER (CHICKEN)
0541	2011 PICKUP TRK	FORD	RANGER 2DR	1FTKR1AD1BPA17681	21778A1	CKN A. CISNER	FRESNO FRYER (CHICKEN)
0606	2006 PICKUP	CHEVROLET	COLORADO	IGCCS196768319667	8G44722	ALFREDO BARRE	GROWOUT
0607	2007 EXT CAB P/U	CHEVROLET	COLORADO	IGCCS199978156757	8K19676	RIGO CARRASCO	GROWOUT
0608	2008 EXT CAB P/U-	GMC	CANYON	IGTCS199888120690	8R57990	ADRIAN DIAZ	GROWOUT
0616	2006 EXT CAB P/U	CHEVROLET	SILVERADO	2GCEC19Z861305375	8G44723	DAN HAWKINS	GROWOUT
0617	2007 FORD PU	FORD	F150	1FTPX125X7NA23646	8G82536	HATCHERY	HATCHERY
0626	2006 EXT CAB P/U	CHEVROLET	COLORADO	IGCCS196468276647	8C82821	MARIO TORRES	GROWOUT
0635	1995 FORD PU	FORD	RE	1FDKE37F7SHA47757	5A11972	CKN GAME HEN	FRESNO FRYER (CHICKEN)
0636	2006 EXT CAB P/U	CHEVROLET	COLORADO	IGCCS196968289085	8D65076	6TH AVE MAINT	GROWOUT
0646	2006 EXT CAB P/U	GMC	CANYON	IGTCS196168281580	8C57687	RODRIGO PADIL	GROWOUT
0656	2006 EXT CAB P/U	CHEVROLET	COLORADO	IGCCS196968301560	8E52986	MATT BARKLOW	GROWOUT
0666	2006 FORD PU	FORD	F350	1FTWF31566EC69409	8C54895	CKN OP-O. ROS	FRESNO FRYER (CHICKEN)
0727	2007 SUV	CHEVROLET	TRAILBLAZE	IGNDS13S472273284	6AYM812	TODD BEAL	QUALITY CONTROL
0728	2008 SMALL PICKUP	GMC	CANYON	IGTCS14E788128137	8T89591	CHRIS COOLIDG	GROWOUT
0737	2007 SUV	CHEVROLET	TRAILBLAZE	IGNDS13S772293089	6AYM811	MARCUS CURREY	G&A
0799	2009 HYBRID MID-S	CHEVROLET	MALIBU HYB	IGIZF57519F134717	6KU2084	POOL CAR	G&A
0830	2000 FULL SIZE PI	GMC	1500 SIERRA	IGTEC19V2YE317584	6L43896	D/F FIELD OPS	GROWOUT
0831	2011 CHEV SILV EX	CHEVROLET	SILVERADO	IGCRCPX4BZ341817	30483D1	LARRY AYTO	GROWOUT
0911	2001 SMALL PICKUP	GMC	SONOMA	IGTCS14541K179829	6Y22084	UTIL/ANNEX	GROWOUT
0947	2007 EXT. CAB P/U	GMC	SIERRA CLA	2GTEC13V871107659	8K01092	TERI SCARABEL	GROWOUT
0977	1997 PICKUP TRK	FORD	RANGER	1FTCR10AXVUA07717	6V99112	ISMAEL CARRAS	GROWOUT
0989	1999 SMALL P/U	FORD	RANGER	1FTYR10C3XUA85766	5Z17512	SECURITY	SECURITY
1063	1993 3X TRACTOR	FREIGHTLIN	FLD 120-64	1FUYDCXB1PH444301	9B29041	EAST SHUTTLE	EMPIRE
1228	1995 3 AXLE TRACT	KENWORTH	T600B	1XKADRX5WR768899	9B43808	LIC SURRENDER	HATCHERY
1255	1995 FRTLNR S	FREIGHTLIN	FLC-12064	1FUKBSEA7SL651409	9A36956	E.TUG PNO	EMPIRE
1258	1988 3X TRUCK TRA	FREIGHTLIN		1FUY2CYB3JP333346	9C01099	EAST TUG PNO	EMPIRE
1265	1995 FREIGHTLINER	FREIGHTLIN		1FUKBSEA5SL651411	9A36954	CHICKEN	TURKEY LIVE HAUL
1344	1994 3 AX TRACTOR	FREIGHTLIN	M112	1FUYDCXBORH865073	9A95246	EMP. SHUTTLE	COLD STORAGE
1345	2013 TRACTOR FRTL	FREIGHTLIN	M112	1FUBC5DV3DHBY1052	9E23512	LIVE HAUL	TURKEY LIVE HAUL
1346	2013 TRACTOR FRTL	FREIGHTLIN	M112	1FUBC5DV5DHY1053	9E23513	LIVE HAUL	TURKEY LIVE HAUL
1347	2013 TRACTOR FRTL	FREIGHTLIN	M112	1FUBC5DV7DHY1054	9E23514	LIVE HAUL	TURKEY LIVE HAUL



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
1348	2013 TRACTOR FRTL	FREIGHTLIN	M112	1FUBC5DV9DHBV1055	9E23515	LIVE HAUL	TURKEY LIVE HAUL FINISHED GOODS HAUL
1349	2013 STOR-DOOR FR	FREIGHTLIN	CASCADIA	1FUBGBDV1DLFA4476	9E23516	EMPIRE TRANS	TURKEY LIVE HAUL
1350	2013 2 AXLE TRACT	FREIGHTLIN	M2112	1FUBC5DV0DFH1148	9E98588	LIVE HAUL	FEED DELIVERY
1351	2013 3 AXLE TRACT	FREIGHTLIN	CA125DC	3AKJGEDV0DSFH1149	9E98589	FEED DEL	FEED DELIVERY
1352	2013 3 AXLE TRACT	FREIGHTLIN	CA125DC	3AKJGEDV7DSFH1150	9E98590	FEED DEL	FEED DELIVERY
1353	2013 3 AXLE TRACT	FREIGHTLIN	CA125DC	3AKJGEDV9DSFH1151	9E98591	FEED DEL	FEED DELIVERY
1355	2013 3 AXLE TRACT	FREIGHTLIN	CA125DC	3AKJGEDV0DSFH1152	9E98592	FEED DEL	FEED DELIVERY
1356	2013 3 AXLE TRACT	FREIGHTLIN	CA125DC	1FUIGEDV9DLFH1713	9E98593	FEED DEL	FEED DELIVERY
1357	1997 3X TRUCK TRA	FREIGHTLIN		1FUY3MDBXVH696185	9B43751	LIC SURRENDER	EMPIRE
1375	1995 FRTLNR 3 AXL	FREIGHTLIN		1FUKBSEA4VL651369	9B13338	E/YARD DOG	FEED DELIVERY
1377	1997 3X TRUCK TRA	FREIGHTLIN		1FUY3MDB0VH696177	9B43750	LIC SURRENDER	EMPIRE
1385	'95 FRTLNR 3X TRA	FREIGHTLIN		1FUKBSEA8VL651357	9B13327	PNO Y/D	FEED DELIVERY
1496	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH86N446992	9D83143	FIN GOODS	FINISHED GOODS HAUL
1506	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH86N446989	9D78618	FIN GOODS	FINISHED GOODS
1516	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH66N446988	9D78617	HATCHERY	HAUL HATCHERY FINISHED GOODS
1526	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH46N446990	9D78616	FIN GOODS	HAUL FINISHED GOODS
1536	2006 3 AXLE TRACT	VOLVO	VNL 64T	4V4NC9GH66N446991	9E26951	FIN GOODS	HAUL FINISHED GOODS
1546	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH16N446994	9D78658	FIN GOODS	HAUL FINISHED GOODS
1556	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH36N446995	9D78669	FIN GOODS	HAUL FINISHED GOODS
1566	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH56N446996	9D78659	FIN GOODS	HAUL FINISHED GOODS
1576	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GHX6N446993	9E06900	FIN GOODS	HAUL FINISHED GOODS
1586	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH76N446997	9D83145	FIN GOODS	HAUL FINISHED GOODS
1596	2006 3X TRACTOR	VOLVO	VNL 64T	4V4NC9GH96N446998	9D78882	HATCHERY	HAUL HATCHERY
1716	1976 2 AXLE TRACT	WHITE		CA112HPI21119	0000000	GOAT-4SALE	EMPIRE
1775	'95 FRTLNR CAB-OV	FREIGHTLIN		1FUKBSEA5SL651408	9A36957	E/YDOG PNO	EMPIRE
1777	1977 2 AXLE TRACT	FREIGHTLIN		CA212HLI134318		EAST-4SALE	EMPIRE
1854	1994 2 AXLE TRACT	KENWORTH	T800B	1XKDA68X6RR621677	9A35009	TURKEY	OUT OF STATE SALES
1880	2000 2 AX TRACTOR	KENWORTH	T800B	3WKDA08XXYF842312	9B56547	LIC SURRENDER	OUT OF STATE SALES
1979	1999 2X TRACTOR	FREIGHTLIN	FLD120	1FUWDCXA8XL952888	9D43993	LIC SURRENDER	OUT OF STATE SALES
1989	1999 2X TRACTOR	FREIGHTLIN	FLD120	1FUWDCXA7XL952901	9D43994	LIC SURRENDER	OUT OF STATE SALES
1999	1999 2X TRACTOR	FREIGHTLIN	FLD120	1FUWDCXA4XL952905	9D43995	LIC SURRENDER	OUT OF STATE SALES
2037	1967 TRAILER	FMC	IRST NEW	BU1286	1WF8646	CHICKEN	CHICKEN LIVE HAUL
2139	1969 REF TRLR	TIMPT	VAN	16761	1WC3168	STOCKTON/PNO	STOCKTON
2147	1997 48' REF TRAI	UTILITY		1UYVS2489VU257008	1WH6749	HATCH-STRG	HATCHERY
2198	1968 TRAILER	FMC	IRST NEW	BU1271A	1WH3653	CHICKEN	CHICKEN LIVE HAUL
2353	1993 48' REF TRL	UTILITY	VS2R	1UYVS2480PU837704	4BU3401	HATCHERY-STRG	HATCHERY
2363	1993 28 FT REFER	REEFER UTI		1UYVS1272PU829205	4AW5182	LIVEHAUL	CHICKEN DELIVERY
2403	1993 48' REF TRLR	UTILITY	VS2R	1UYVS2489PU837703	4BU3404	HATCHERY-STRG	HATCHERY



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LiC #	OPERATOR	GL Code Description
2408	1998 REFER 28FT T	WABASH	REFER	IJJVZ81W9W1469054	4CF468	LIVEHAUL	CHICKEN DELIVERY
2423	TRAILER FIXED RAC	UTILITY	V52R	IUYVS2486PU837707	4BU3405	EAST AVE-STRG	EMPIRE
2540	1970 BQ42F TRL	SPCNS	FIXED RACK	DR1110461T	4DY4293	AB AG @ CVTR	OUT OF STATE SALES
2600	1970 BQ42F TRL	LAKESIDE	FIXED RACK	DR1110464T	4MF7045	AB AG	OUT OF STATE SALES
2620	TRAILER	LAKESIDE	FIXED RACK	DR1090690T	4HD5258	TURKEY L/HAUL	OUT OF STATE SALES
2640	1970 TRAILER	UTILITY	FIXED RACK	7L03334002	4CJ9448	LIVE HAUL	OUT OF STATE SALES
2697	1967 TRAILER	FREUHAUF	BRIGHT-96	VYH415701	1UR4661	TURKEY L/HAUL	OUT OF STATE SALES
2714	1974 TRAILER	UTILITY	FIXED RACK	7L46705002	4CJ9434	AB AG@CVTR	OUT OF STATE SALES
2790	1970 TRAILER	UTILITY	BRIGHT-96	6L92755001	4AN3160	TURKEY L/HAUL	OUT OF STATE SALES
2807	2007 WALKING FLOO	TTC	CARRIER BO	IT92S53247B073281	4HF2644	LITTER	LITTER
2827	2007 WALKING FLOO	TTC	CARRIER BO	IT92S53287B073283	4HF2699	LITTER	LITTER
2837	2007 WALKING FLOO	TTC	CARRIER BO	IT92S532X7B073284	4HB9088	LITTER	LITTER
2847	2007 WALKING FLOO	TTC	CARRIER BO	IT92S53217B073285	4HF2811	LITTER	LITTER
2857	2007 WALKING FLOO	TTC	CARRIER BO	IT92S53237B073286	4HB9119	LITTER	LITTER
2867	2007 WALKING FLOO	TTC	CARRIER BO	IT92S53257B073287	4HF2560	LITTER	LITTER
3010	1970 TRAILER	UTILITY	BRIGHT-96	7L03296003	4AN7485	TURKEY L/HAUL	OUT OF STATE SALES
3020	1970 TRAILER	UTILITY	BRIGHT-96	7L03296008	1VH2577	TURKEY L/HAUL	OUT OF STATE SALES
3111	1991 38' FEED TRL	LEDWELL	BRIGHT-96	1L9BD12COML033122	4FC4503	FEED DELIVERY	FEED DELIVERY
3207	1967 TURKEY TRAIL	UTILITY	BRIGHT-96	6L70966007	4CA2122	LIVEHAUL	OUT OF STATE SALES
3236	300 GAL WATER TAN	WATER TANK				HUNTSMAN	GROWOUT
3246	1986 TILT TRAILER	SPCNS	RC	CA447955	4MB8531	P.BROWN MAINT	MAINTENANCE
3264	TILT BED TRAILER	ZACKY		DR772193T		EXPERIMENTAL	GROWOUT
3282	1982 CONGEAR	ZACKY		3282		YARD DOLLY	EMPIRE
3326	1966 TRAILER	UTILITY		6T60063009	4JF8299	AB AG	OUT OF STATE SALES
3356	1966 TRAILER	UTILITY		6T60063008	4JN5601	LIVE HAUL	OUT OF STATE SALES
3388	1969 CONGEAR	FREUHAUF		1181010	4AW5110	LIVEHAUL	CHICKEN DELIVERY
3443	1973 TRAILER	TRAILMOBIL	BRIGHT-96	K22276	1WP1408	TKY LIVE HAUL	OUT OF STATE SALES
3453	1973 TRAILER	TRAILMOBIL	BRIGHT-96	K22279	1WP1407	TKY LIVE HAUL	OUT OF STATE SALES
3460	1970 TRAILER	PIKE	BRIGHT-96	70F1144	4CJ9449	TURKEY L/H	OUT OF STATE SALES
3470	1970 FIXED RACK T	PIKE	BRIGHT-96	CA397284	4BU3409	LIVE HAUL	OUT OF STATE SALES
3540	1970 CONGEAR	SPCNS		DR1110463T	4AN7489	TURKEY L/HAUL	CHICKEN LIVE HAUL
3550	1970 CONGEAR	SPCNS		DR1110460T	4HD5553	TKY L/H	OUT OF STATE SALES
3560	SPCNS DOLLY 1970	SPCNS		DR1090688T	4CY7954	CHICKEN	TURKEY LIVE HAUL
3609	1969 CONGEAR	TRAILMOBIL	DOLLY	E64450	1VB9591	AB AG	OUT OF STATE SALES
3631	2001 36' FEED TRA	PINSON	AA84V288FF	IP9AB3624IP255662	1WZ3209	FEED DELIVERY	FEED DELIVERY
3637	2007 36' FEED TRA	PINSON	AA84V288FF	IP9AB36297P255066	4HZ1492	FEED DELIVERY	FEED DELIVERY
3651	CONGEAR	UTILITY		CA1123502	4LV5535	LIVE HAUL	OUT OF STATE SALES
3661	2001 36' FEED TRA	PINSON	AA84V288FF	IP9AB3622IP255661	4MB8550	FEED DELIVERY	FEED DELIVERY
3667	2007 FEED TRAILER	PINSON	0784V28S32	IP9AB36237P255080	4JN5600	FEED DELIVERY	FEED DELIVERY
3741	1971 CONGEAR	UTILITY		DMV16046CA	1UG8910	TURKEY L/HAUL	OUT OF STATE SALES
3773	1973 CONGEAR	TRAILMOBIL	DOLLY	J24370	4CA2139	LIVE HAUL	OUT OF STATE SALES
3788	1978 CONGEAR	UTILITY		7N02846005	1VN1734	LIVE HAUL	OUT OF STATE SALES
3791	2001 36' FEED TRA	PINSON	AA84V288FF	IP9AB3620IP255660	1WZ3210	FEED DELIVERY	FEED DELIVERY
3894	1964 CONGEAR	FREUHAUF		FRE234301	1VH2581	TKY LIVE HAUL	OUT OF STATE SALES
3985	1965 CONGEAR	BROWN		S651203	4DY4289	CHICKEN	OUT OF STATE SALES
4024	1994 50' RRF TRLR	GREAT DANE	7011TZ-1	IGRAA0021RB096702	1XA4517	6TH AVE STORA	GROWOUT
4041	2001 36' FEED TRA	PINSON	AA84V288FF	IP9AB3624IP255659	4KH4206	FEED DELIVERY	FEED DELIVERY
4128	1988 48' INSULATE	GREAT DANE	INSULATED	IGRAA9223JB191803	4AP3708	E/EMP SHUTTLE	EMPIRE



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
4154	1994 50' REF TRLR	TRAILMOBIL	01AN	1PT01ANH5R9004815	1WP1777	E/EMP SHUTTLE	EMPIRE
4192	1992 53' REF TRLR	TRAILMOBIL	01AN	1PT01ANH3N9005665	1VD8551	E/EMP SHUTTLE	EMPIRE
4293	1983 FLATBED TRK	FORD	LN 8000	1FDXR80U8DV A35203	2U78713	DELORO FLDT OP	GROWOUT
4335	1985 28'X96" TR	TUFF BOY	FLAT	1T9A61320F1030912	4AY6706	LIVEHAUL	CHICKEN DELIVERY
4345	1985 28'X96" TR	TUFF BOY	FLAT	1T9A6131XF1030911	4AY6705	LIVEHAUL	CHICKEN DELIVERY
4402	1972 28'X96" TR	BROWN	FLAT	S725780	4AY6712	LIVEHAUL	CHICKEN DELIVERY
4412	1972 28'X96" TR	BROWN	FLAT	S725790	4AY6711	LIVEHAUL	CHICKEN DELIVERY
4604	1974 TRAILER	UTILITY	FIXED RACK	7L47540015	4AN6740	AB AG	OUT OF STATE SALES
4616	1966 TRAILER	UTILITY	FIXED RACK	44706	IUY6707	CHICKEN	CHICKEN LIVE HAUL
4626	1966 TKY TRLR	UTILITY	FIXED RACK	44707	IUY6706	CHICKEN	CHICKEN LIVE HAUL
4642	1972 FB TRAILER	TRAILMOBIL		J20720	4CY8758	TURKEY L/HAUL	OUT OF STATE SALES
4652	1972 FB TRAILER	TRAILMOBIL		J20719	4CY8759	TURKEY L/HAUL	OUT OF STATE SALES
4662	1972 FB TRAILER	TRAILMOBIL		H65675	4CY8760	TURKEY L/HAUL	OUT OF STATE SALES
4670	1970 CONGEAR	UTILITY		7N02848002	IUY6708	TURKEY PNO	OUT OF STATE SALES
4773	1973 CONGEAR	STRICK	DOLLY	CP607539	4AN6738	AB AG L/H	OUT OF STATE SALES
4799	1989 TRAILER	SPCNS		CA498673	4KB9580	TURKEY GROWOU	GROWOUT
4809	1989 TRAILER	SPCNS		CA498671	4KB9579	TURKEY GROWOU	GROWOUT
4851	1981 CONGEAR	TODCO		JU743027	4AN6739	LIVE HAUL	OUT OF STATE SALES
5058	2008 POULT TRANSF	SMITHWAY	POULT TRAN	IGRAA76288B704178	4HZ1815	KERMAN HATCHE	HATCHERY
5065	1995 POULT VAN	FREIGHTLIN	FL-70	1FV6HFBASL656166	7K40307	LIC SURRENDER	HATCHERY
5070	2013 28' REFR. TR	GREAT DANE	EVEREST TL	IGRAA5614DB706502	4MF7064	F/G	FINISHED GOODS
5098	1998 48' REEFER T	GREAT DANE	REEFER	IGRAA9621WB184303	4GZ1933	TKY HATCHERY	HAUL
5103	2003 UTILITY P/U	CHEVROLET	SILVERADO	IGCHC24U73E347321	7G81505	FERNANDO MACI	HATCHERY
5110	2010 DODGE CREW C	DODGE 4DR	RAM 2500	3D7UT2CL7AG174614	56011DI	CHICKEN	MAINTENANCE
5112	2012 DODGE RAM CH	DODGE	RAM 5500	3C7WDMBL8CG122900	46736F1	GROWOUT	CHICKEN LIVE HAUL
5113	2003 UTILITY P/U	FORD	F250 SUPER	3FTNF20L93MB26692	8J13390	SANTIAGO GARC	GROWOUT
5114	2004 UTILITY P/U	CHEVROLET	SILVERADO	1GBJC39U94E362621	7V59310	ALVARO CALDER	MAINTENANCE
5122	2012 RAM CHASSIS	DODGE 550	RAM CREW C	1GCHC24U13E354636	7G24309	JOSE GARCIA	MAINTENANCE
5123	2003 UTILITY P/U	CHEVROLET	SILVERADO	1GCHC24U13E354636	7G24309	DANIEL TORRES	OUT OF STATE SALES
5126	2006 PICKUP	FORD	F550	1FDAF56P76EB73736	8G73662	GROW-POULT TR	MAINTENANCE
5133	2003 UTILITY P/U	FORD	F-250 XL SU	3FTNF20L23MB38182	8R00529	ROBERTO CALDE	GROWOUT
5147	1997 F/B TRUCK	FORD	F450	1FDL47FOVEA04701	6K53325	TRANSFER TRUC	MAINTENANCE
5197	1997 F/B TRUCK	FORD	F800	1FDNF80C3VV A24764	6D86783	RECOVERED - BEING	COLD STORAGE
5217	1997 CHEV 1 TON E	CHEV	MDL 3500	1GCHG39RXV1081916	5R12057	REPAIRED	HATCHERY
5241	2001 UTILITY EXT	CHEVROLET	SILVERADO	1GBJK39U81F126955	8J13393	TKY HATCHERY	MAINTENANCE
5245	1995 XL PICKUP	FORD	F250	1FTEF25N5SLA36210	5D73981	PARKER BROWN	HATCHERY
5300	WABASH 2000	WABASH 53F		1JUV532W6YL640192	4GE4344	KERMAN HATCHE	FINISHED GOODS
5301	TRAILMOBILE 53 FT	REFER TRAI	REFER	1PT01ANH918001698	4GE4317	FIN GOODS	HAUL
5310	WABASH 53FT REFER	WABASH	REFER	1JUV532W2YL640142	4JN5618	FINISHED GOOD	FINISHED GOODS
5320	WABASH 53 FT	WABASH REF	REFER	1JUV532W2YL640162	4GE4348	FIN GOODS	HAUL
5330	WABASH 53 FT REF	WABASH REF	WABASH REF	1JUV532W9YL640168	4JN5608	FIN GDS	FINISHED GOODS



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
5340	WABASH 53 FT REFE	WABASH	REFER	IJJV532W0YL640169	4GE4346	FIN GOODS	HAUL FINISHED GOODS
5350	WABASH 53 FT		REFER	IJJV532W1XL640129	4KB9834	FIN GOODS	HAUL FINISHED GOODS
5369	2009 53' REFER TR	GREAT DANE	SUPER SEAL	IGRAA062X9W702403	4JN6363	F/G	HAUL FINISHED GOODS
5370	TRAILMOBILE 48' 2	TRAILMOBIL	REEFER	IPT01ADH0X9012481	4GE4318	FIN GOODS	HAUL FINISHED GOODS
5561	1991 48 X 102 REF	TRAILMOBIL	O1AN-1UAL	IPT01ANHXM9004978	IVS2978	FIN GOODS	HAUL FINISHED GOODS
5605	1995 48X102 REFER	UTILITY	VS2R	IUYVS2483SU600505	IWD2341	FIN GOODS	HAUL FINISHED GOODS
5609	'99 UTIL 48'X102"	UTILITY	REFER TRAI	IUYVS2482XU029306	4LJ1238	EAST PLNT	EMPIRE FINISHED GOODS
5615	1995 48X102 REEFE	UTILITY	VS2R	IUYVS2487SU600507	IWD2343	FIN GOODS	HAUL FINISHED GOODS
5619	'99 GREAT DANE 48	GREAT DANE	REFER TRAI	IGRAA9624XB129037	4LJ1239	F/G	HAUL FINISHED GOODS
5625	1995 REFER TRAILER	UTILITY	VS2R	IUYVS2487SU600510	IWD2349	FIN GOODS	HAUL FINISHED GOODS
5710	MOBILE HOME	SHOREMANOR		CAL363744 HUD	8514401	G&H RANCH	GROWOUT
5711	MOBILE HOME	CHAMPION	125	CAL212206	LAA1679	G&H RANCH	GROWOUT
5716	MOBILE HOME	FREEDOM		216118 HUD	AAF1166	G&H RANCH	GROWOUT
5720	MOBILE HOME	BENDIX		A401876 HUD	AAD7342	G&H RANCH	GROWOUT
5725	MOBILE HOME	MATEE		095701S9027C	AB17295	G&H RANCH	GROWOUT
5726	MOBILE HOME	CHAMPION	125	CAL192041 HUD	LAA1678	G&H RANCH	GROWOUT
5744	12X60 COM'L COACH	SPECTRUM	1260	84110975	CCA8114	LITTER(#5884)	LITTER
5748	HOUSE TRAILER	SPECTRUM	1260	88024279	CCD8068	BRAWLEY	GROWOUT FINISHED GOODS
5765	MOBILE HOME	SPECTRUM D	1260	85101800	CCA3078	TRNSP-EMPIRE	HAUL
5807	1977 OFFICE TR/LR	SCOTSMAN	COACH	7719S8781	ICP9731	GUARD-E/PLNT	EMPIRE
5869	ROTOTILLER	BEFCO	11-T50-366	265000		G&H RANCH	GROWOUT
5892	74" ROTOTILLER	BUSH HOG	RTS74-03	12-00749		SAMUEL #1	GROWOUT
5949	1979 3 AXLE TRLR	ZIEMAN	FLAT BED	ZP50848	UJ22626	D/F OPS.	GROWOUT
5965	1985 FORKLIFT	TOYOTA	42-3FGC13	12480		COLD STORAGE	COLD STORAGE
5972	B/C 3WHEEL FORKLI	BC35000	BRIGHT COO	BC3500590112		CHICKEN	FRESNO FRYER
5999	ROTOTILLER	BEFCO	T50	267726		BRAWLEY	(CHICKEN) GROWOUT
6000	6' BOX SCRAPER					AMER/BROODER	GROWOUT
6002	28X5 BEAVERTAIL T	BIG TEX UT	430 22GN-2	16GVX2822C2608451	4LX8460	TRKY GROW-OUT	GROWOUT
6008	WINDROWER	LEWIS BROS	8FT/45GA T	UNKNOWN		GROW-OUT	GROWOUT
6009	2009 FARM TRACTOR	2009 DENTZ	AGROLUX70	1252		GROW-OUT	GROWOUT
6010	BLADE	RHINO	LK	LR-111805		PLACER	GROWOUT
6020	8' BOX SCRAPER	CHAPHIN SP				AMERICAN	GROWOUT
6035	2005 FARM TRACTOR	MASSEY FER	492-4LP	BP20048		AMERICAN	GROWOUT
6044	ANGLE BLADE	RHINO	LR-7	73772		D/F OPS	GROWOUT
6074	ROTARY MOWER	RHINO	S-5 MOWER	10626		DESERT FIELD	GROWOUT
6088	2008 FARM TRACTOR	MASSEY FUR	GC2300	JSA20116		AMERICAN BROO	GROWOUT
6254	SOILMOVER		425R	018414200		HUNTSMAN	GROWOUT

EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
6269	1989 ROTOTILLER	BEFCO	11-G50-231	115682		18TH AVE RANC	GROWOUT
6289	1999 GOOSENECK TR	TRU-TRAILE	PRO TRAK	5BNDG252XXC001430	4CY8752	TURKEY FIELD	GROWOUT
6330	CARRYALL 1YD					DESERT	GROWOUT
6340	SPRAYER	BRIGGS STR	250 GAL SP			EXPERIMENTAL	GROWOUT
6350	SPRAYER	JEAN BEAN	500 GAL SP			DESERT	ORO GRANDE FRYER
6370	SPRAYER					DESERT	ORO GRANDE FRYER
6390	SPRAYER		200 GAL SP			DESERT	(CHICKEN)
6396	SPRAYER,POULTRY H	LEWIS	200 GAL SP			HUNTSMAN	(CHICKEN)
6440	SPRAYER	AIR O FAN	500 GALLON	1162		G & H RANCH	GROWOUT
			500 GAL SP			BRAWLEY TKY R	GROWOUT
6453	HOUSEKEEPER	LEWIS					ORO GRANDE FRYER
6470	SPRAYER	JOHN BEAN	150 GAL SP			DESERT FIELD	(CHICKEN)
6490	MEDICATION TANK					EXPERIMENTAL	GROWOUT
6520	FEED CART	LEHMAN				HUNTSMAN	GROWOUT
6530	FEED CART	DOJEN				BRAWLEY	GROWOUT
6540	FEED CART	LEHMAN				TURKEY FIELD	GROWOUT
6550	FEED CART	LEHMAN				EXPERIMENTAL	GROWOUT
6560	FEED CART	LEHMAN				HOLM BROOD	GROWOUT
6579	8' BOX SCRAPER			KKBB961-3		BRAWLEY	GROWOUT
6589	8' BOX SCRAPER			KKBB961-2		18TH AVE	GROWOUT
6590	1990 BLADE	RHINO		B46103A		18TH AVE	GROWOUT
6600	POST HOLE DIGGER	DAN MUSER		1350		KENT RANCH	GROWOUT
6638	1988 SOIL MOVER	CARRYALL	500	1H8-16379		BRAWLEY	GROWOUT
6650	FEED CART					18TH AVE	GROWOUT
6670	SWEEPER	SWEEPSTER	S32P7	18020		HUNTSMAN	GROWOUT
6682	2002 FORKLIFT 5	TOYOTA	426FGU25	65549		HOLM BROOD	GROWOUT
6688	1998 FARM TRACTOR	FORD		067488B		EAST PLANT	EMPIRE
6689	1999 MITSUBISHI F	MITSUBISHI	FGC20K	AF82C-01193		18TH AVE	GROWOUT
6691	72" ROTARY CUTTER	BUSHHOG		12442		EAST PLANT	EMPIRE
6700	SCRAPER	BISON	NVH-180-T	101065983		AMERICAN	GROWOUT
6720	2010 6' REAR SCRA					BRAWLEY	GROWOUT
6730	SCRAPER					6TH AVE BROOD	GROWOUT
6741	HOUSEKEEPER	LEWIS	3	947		EXPERIMENTAL	GROWOUT
6759	1989 FARM TRACTOR	KUBOTA	M7030DTL	50232		HUNTSMAN	GROWOUT
6841	74" ROTOTILLER	BEFCO	374-232	130137		BRAWLEY	GROWOUT
6851	74" ROTOTILLER	BEFCO	374-232	130586		AMERICAN GROW	GROWOUT
6861	50" ROTOTILLER	BEFCO	G50	127630		PLACER	GROWOUT
6891	SOIL MOVER	CARRYALL	500RF	1H816381		AMERICAN BROO	GROWOUT
6892	SOIL MOVER	PORTERS WE	MCE8	1731		AMERICAN BROO	GROWOUT
6901	500 GL SPRAYER	MINI BLAST	MB536	M913314		G&H RANCH	GROWOUT
6941	8' SCRAPER	CHAPIN	DB96	KK-BB-96-1-7		AMERICAN BROO	GROWOUT
6958	FIELD CART		3 TON			PLACER GROW	GROWOUT
6992	LEWIS PLTRY HOUSE			1505		HUNTSMAN	GROWOUT
7001	2009 FARM TRACTOR	MASSEY FER	2615 (CLAS	502475		DESERT	GROWOUT
7010	YALE FORKLIFT	YALE	M20R4S071	S-185717		MARS #1	GROWOUT
7019	2009 ROTARY TILLE	BUSH HOG	RTS-62	12-01044		COLD STORAGE	COLD STORAGE
						MARS BROOD	GROWOUT



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
7029	2009 FARM TRACTOR	DEUTZ-FAHR	AGROLUX 60	D10523WXE1312		EXPERIMENTAL	GROWOUT
7037	TRANSPORT AUGER	TRANSPORT	8X34	80-10834P		BRAWLEY TKY.	GROWOUT
7039	2009 FARM TRACTOR	DEUTZ-FAHR	AGROLUX 60	D10523WXE1308		SAMUEL #1-GRO	GROWOUT
7148	2008 FARM TRACTOR	MASSEY FER	GC2400	JTC02111		BRAWLEY RANCH	GROWOUT
7177	1997 FARM TRACTOR	JOHN DEERE	5500N	LV5500N670887		DESERT FIELD	GROWOUT
7199	1988 FARM TRACTOR	KUBOTA	B6200DT	64536		18TH AVE RANC	GROWOUT
7219	2009 ROTARY TILLE	BUSH HOG	RTS62	12-00493		HUNTSMAN	GROWOUT
7220	2010 ROTARY TILLE	FALC	BSS-1800	32873		KENT	GROWOUT
7223	1993 FARM TRACTOR	FORD	6610	ZX3505 93		G & H RANCH	GROWOUT
7229	ROTOTILLER	BEFCO	11-G50-231	115665		HUNTSMAN	GROWOUT
7252	GENERATOR, DIESEL	KOHLER	250R0781	012134		KERMAN HATCHE	HATCHERY
7324	1994 FARM TRACTOR	KUBOTA	L3600DT	L3600DT50990		TURKEY	GROWOUT
7330	1990 FARM TRACTOR	KUBOTA	M8030DT	50418		D/F OOS	GROWOUT
7331	LOW PROFILE TRACT	MASSEY FER	492	BN30013		DESERT FIELD	GROWOUT
7359	6' BOX SCRAPER	CHAPIN				18TH AVENUE	GROWOUT
7372	TILLER	NEW HOUSE	RT-5	20833		18TH AVENUE	GROWOUT
7379	BEFCO ROTOTILLER	BEFCO	11-374-232	121309		18TH AVENUE	GROWOUT
7491	2001 2 AXLE GENER	CARSON		4HXHD162X1C034338	4CN3592	MILL MAINT.	MAINTENANCE
7611	2011 BUSH HOG	BUSH HOG	SQ10 - 5'	12-052		6TH AVE	GROWOUT
7613	1983 FORKLIFT	CLARK	C-500-45	355-508-2548		FRESNO GARAGE	GROWOUT
7618	DRAG SCRAPER	GEARMOR	DS10-FL	1984		G&H RANCH	GROWOUT
7717	1987 FEED CART	LEHMAN				AMERICAN BROO	GROWOUT
7800	2001 MULE	KAWASAKI	550	JK1AFBC131B529977		AMERICAN BROO	GROWOUT
7802	FEED CART		LEHMAN			G&H RANCH	GROWOUT
7857	GENERATOR	25 KVA		D471		BRAWLEY	GROWOUT
7887	ROLLING MAGNET					EAST PLANT	EMPIRE
7907	1987 OFFSET DISC	G & L	416MD	416-MD-203-1186		EXPERIMENTAL	GROWOUT
7971	1991 5000# FORKLI	MITSUBISHI	FG25	AF17A-50065		PARKER BROWN	MAINTENANCE
8007	1987 8 FT DISC		TANDEM			HUNTSMAN	GROWOUT
8027	1967 FORKLIFT	CLARK	F163	IT40-63-837-167		STOCKTON F.P.	STOCKTON
8060	DISC	DOMRIES	H10-600	8980		18TH AVE	GROWOUT
8070	N00 GAL SPRAYER	DURANDWAYL	AF500DPG	12795		6TH AVE BROOD	GROWOUT
8090	1990 4000 GAL WAT	PETERBILT	CONV	D276765GL-----	55936DI	TURKEY/FLD OP	GROWOUT
8101	GRAIN ELEVATOR	MY-D HAN-D				AMERICAN BROO	GROWOUT
8119	CLARK FORKLIFT	CLARK	C40B	86-399		TURKEY PLANT	EMPIRE
8126	GRAIN ELEVATOR	MY-D HAN-D	41'X6'			6TH AVE BROOD	GROWOUT
8139	MASSEY FERGUSON	M/F	SJ327E	FS415778		AMERICAN GROV	GROWOUT
8143	1993 FARM TRACTOR	KUBOTA	M7030DTN-B	70739		PLACER	GROWOUT
8176	2006 FARM TRACTOR	MASSEY FER	492-4WD	BP37031		6TH AVE	GROWOUT
8180	SCRAPER	MISKIN	7500	19014		6TH AVE BROOD	GROWOUT
8200	SCRAPER	MISKIN	7500	19219		6TH AVE BROOD	GROWOUT
8210	POULT TRAILER			001		6TH AVE	GROWOUT
8220	POULT TRAILER			002		6TH AVE	GROWOUT
8230	POULT TRAILER			003		6TH AVE	GROWOUT
8240	POST HOLE DIGGER		08570	MD-PHD2101		6TH AVE BROOD	GROWOUT
8250	DISC			30936		6TH AVE BROOD	GROWOUT
8260	CULTI PAK			004		6TH AVE BROOD	GROWOUT
8280	MOWER	PACIFIC		005		6TH AVE BROOD	GROWOUT



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
8290	BOX SCRAPER	LAND PRIDE	BB2666	L42962		6TH AVE BROOD	GROWOUT
8306	ROTO TILLER	BEFCO	T-60-274	263380		6TH AVE/RED	GROWOUT
8320	HYD SCRAPER			008		6TH AVE BROOD	GROWOUT
8330	TRAILER 17 CU FT	AGRI FAB		009		6TH AVE	GROWOUT
8340	TRAILER		2 AXLE FLA	CA795443	1FK2491	6TH AVE BROOD	GROWOUT
8344	8.5X14 F/B TRALE	CARSON	DOVETAIL	4HXFB142XDC163975	4ML1711	CHICKEN	CHICKEN DELIVERY
8356	1996 500 GAL SPRA	REARS	MB500	M95173		6TH AVE BROOD	GROWOUT
8362	FARM TRACTOR	KUBOTA	L3010 GST	76020		6TH AVENUE	GROWOUT
8366	FEED AUGER	KOLER	7	7		G&H	GROWOUT
8372	FARM TRACTOR	KUBOTA	L3010 GST	75950		6TH AVENUE	GROWOUT
8391	3-POINT FORKLIFT	GEARMORE	L500	2291		6TH AVE BROOD	GROWOUT
8393	1983 L.P.G FORKLI	DATSUM/NIS	C-3000			COLD STORAGE	COLD STORAGE
8415	1985 SOIL MOVER	SOIL MOVER	225 RF	I144-14531		DESERT FIELD	GROWOUT
8430	TEFONI SPRAY RIG	TEFONI	500 GAL SP	25 1137		DESERT FIELD	GROWOUT
8445	GENERATOR		832-0-809	A35279TK		EXPERIMENTAL	GROWOUT
8446	1996 GENERATOR SE	DETROIT DI	75KW 4-71	4A199006		6TH AVENUE	GROWOUT
8483	1993 FARM TRACTOR	KUBOTA	M8030DTL	60334		HUNTSMAN OOS	GROWOUT
8492	2002 GOLF CART	CLUB CAR	48V ELECTR	AA0238204226		6TH AVENUE	GROWOUT
8497	2006 CLUB CAR	UTILITY LI	CCUL-06	PH0846-981838		ROFF RNCH (LE	FRESNO FRYER
8509	2009 FARM TRACTOR	DUETZ-FAHR	AGROLUX 70	1399		HUNTSMAN	(CHICKEN)
8510	1980 FARM TRACTOR	KUBOTA	M7500DT	10113		DESERT FIELD	GROWOUT
8540	GEARMORE SPEADER	SWEESTER	S32P7L	001024 (12045)		6TH AVE	GROWOUT
8554	1994 FARM TRACTOR	KUBOTA	M8030DT	70707		T/I	GROWOUT
8555	2005 FARM TRACTOR	MASSEY FER	492-4LP	BN34010		6TH AVE	GROWOUT
8574	1994 FARM TRACTOR	KUBOTA	M8030DT	70734		6TH AVE	GROWOUT
8595	1995 FARM TRACTOR	FORD	4430 4WD	59149		KENT	GROWOUT
8642	2002 GOLF CART	CLUB CAR	48V ELECTR	AA0238204228		6TH AVENUE	GROWOUT
8643	2006 GOLF CART	CLUB CAR	CCUL-06	PQ0738-815454			FRESNO FRYER
8646	2006 GOLF CART	E-Z GO	TXE ELECTR	2333538		EAST PLANT	(CHICKEN)
8647	3 PT DISC	HOMEMADE	BENS TRACT	CAT1		18TH AVENUE	EMPIRE
8660	2004 FARM TRACTOR	MASSEY FER	492-4WD	BN43051		HOLM RANCH	GROWOUT
8690	SCRAPER					BRAWLEY	GROWOUT
8700	MANITOU FORKLIFT	5000# 3-WH	TMT320HT/T	750427		CHICKEN	FRESNO FRYER
8707	2007 FARM TRACTOR	MASSEY FER	492	8029BP34069		KERMAN TURKEY	(CHICKEN)
8717	ROTARY TILLER 6	BEFCO	T50-366	267727		KERMAN TURKEY	GROWOUT
8727	SOIL MOVER	CARRY-ALL	MEC8			KERMAN TURKEY	GROWOUT
8793	2003 GOLF CART	CLUB CAR	48V IQ ELE	AQ0352354202		BRAWLEY	GROWOUT
8796	1996 POULTRY HOUS	LEWIS MFG	450 GAL SP	355		BRAWLEY	GROWOUT
8900	0000 GOLF CART	EZ GO	60890	597360		ORO GRANDE FRYER	ORO GRANDE FRYER
8902	ELECT GOLF CART 4	CLUB CAR	PQ0738	815410		DESERT FIELD	(CHICKEN)
8903	2003 GOLF CART	CLUB CAR	DS 48V			BIG FEATHER	GROWOUT
8904	ELECT GOLF CART 4	CLUB CAR	PQ0738	AQ0318-281569		G & H RANCH	GROWOUT
8905	2005 FARM TRACTOR	MASSEY FER	492-4WD LP	8015470		SAMUEL #1	GROWOUT
8906	ROTARY CUTTER	BUSH HOG		BP 34068		G & H RANCH	GROWOUT
				1108111		BRAWLEY	GROWOUT



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
8907	ELECT GOLF CART 4	CLUB CAR	P00745	840970		6TH AVE BROOD	GROWOUT
8913	2003 GOLF CART	CLUB CAR	DS 48V	AQ0318-281616		G & H RANCH	GROWOUT
8915	2005 FARM TRACTOR	MASSEY FER	492-4WD LP	Bp 34069		G & H RANCH	GROWOUT
8916	5X12 FLATBED TRLR	HOMEMADE				G&H RANCH	GROWOUT
8917	PLT TRLR 8'X30'	HOMEMADE				G&H RANCH	GROWOUT
8936	1986 FARM TRACTOR	KUBOTA	M7500DT	11619		PARKER BROWN	GROWOUT
8955	1955 GENERATOR	OKEEFE & M	20 KV			DESERT FIELD	GROWOUT
	WELDER-PORTABLE						
8999	G	PRAXAIR	BOBCAT 225	MA270569H		TKY FIELD MAI	MAINTENANCE
9446	1996 END DUMP REA	ALLCO	EDRL22	1A9ED2213TC152549	7LY1049	MORTALITY	GROWOUT
9721	2001 TURKEY LOADE	BRIGHT	STANDARD	9-2001		A.B.AG TURKEY	OUT OF STATE SALES
9806	2006 FORD PU TRUC	FORD	F350	IFDW33P26EB49312	7233537	SERGIO SANCHE	OUT OF STATE SALES
9811	2001 S10 PICKUP	CHEVROLET	S-10	IGCCS14581K178859	6V10281	E. RADILLO	OUT OF STATE SALES
9825	2005 4X4 P/U	FORD	F350	IFTWW33P25EB86184	7U11680	LIC SURRENDER	OUT OF STATE SALES
9838	TRACTOR LOADER	CASE	480E	17003902		DESERT FIELD	GROWOUT
9872	2002 PICKUP TRUCK	CHEVY	C1500	2GCEC19V121334398	6W80482	ZACKY	G&A
9926	2006 EXT CAB P/U	CHEVROLET	SILVERADO	IGCEC19TX6Z153232	8B34898	D. MARTINEZ	TURKEY LIVE HAUL
5710B	MOBILE HOME	SHOREMANOR		CAL363743 HUD	8514401	G&H RANCH	GROWOUT
5711B	MOBILE HOME	CHAMPION	125	CAL212207	LAA1679	G & H RANCH	GROWOUT
5726B	MOBILE HOME	CHAMPION	125	CAL192042 HUD	LAA1678	G&H RANCH	GROWOUT
B9999	1993 TRAILER	SHOP BUILT	BAR-B-QUE	CA706795	4CY8522	COMPANY GRILL	G&A
R5300	CARRIER 2000 PHOE	CARRIER	NDA94MNO-A	GAG90481115		FINISHED GOOD	FINISHED GOODS
R5301	THERMO KING	SBH11 30 S	YSZXLO2.2Y	11064C2457		FINISHED GOOD	HAUL
R5310	PHOENIX ULTRA XL	CARRIER	NDA94MNO-A	SAE90476856		FINISHED GOOD	FINISHED GOODS
R5320	CARRIER PHOENIX U	CARRIER	NDA94MNO-A	GAD90472737		FINISHED GOOD	HAUL
R5330	CARRIER PHOENIX U	CARRIER 20	NDA94MNO-A	GAE90476848		FINISHED GOOD	FINISHED GOODS
R5340	CARRIER PHOENIX U	CARRIER	NDA94MNO-A	GAE90476849		FINISHED GOOD	HAUL
R5350	CARRIER PHOENIX U	XKBXL02.2E	NDA94MNO-A	GAE90476847		FINISHED GOOD	FINISHED GOODS
R5360	CARRIER PHOENIX U	CARRIER	NDA94MNO-A	GAG90481117		FINISHED GOOD	HAUL
R5369	CARRIER 2500 REF	CARRIER				FINISHED GOOD	HAUL
R5370	THERMO KING	THERMO KIN	SB111 SR+	08984C8374		FINISHED GOOD	FINISHED GOODS
0206	2006 2WD P/U-MID	CHEVROLET	COLORADO	IGCCS148968240185	8J48959	DAVID QUINTAN	HAUL
0207	2007 EXT CAB P/U	CHEVROLET	COLORADO	IGCCS199578151703	8J48961	TKY FIELD	BREEDER
0444	1994 CARGO VAN	CHEVROLET	ASTRO	IGCDM1929RB218288	5D73834	LIC SURRENDER	BREEDER
0451	2001 S-10 PICKUP	CHEVROLET	S-10 FLEET	IGCCS145018151569	6U51522	S. BAINS	BREEDER
0571	2011 PICKUP TRK	FORD	RANGER 2DR	IFTKR1AD7BPA31214	21779A1	MANUEL PALACI	BREEDER
0753	1993 S-10 PICKUP	CHEVROLET	S-10	IGCCS14RXP0160919	4U05243	CENTRAL PNO	BREEDER
4830	UTILITY TRAILER	UNKNOWN	5'2"X20'	NONE	OFFROAD	SMITH MOUNTAI	BREEDER



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
4840	UTILITY TRAILER	SEARS & RO	5'10"X12'	8-86809	OFFROAD	HAYES	BREEDER
5039	1999 F/B TRUCK	FORD	F450	1FDXF46F7XEC83540	6Y21275	D. QUINTANA	BREEDER
5331	1991 1 1/2 PICKUP	FORD	F450	2FDLF47G5MCA05274	4M50890	TWIN PALMS	BREEDER
5387	1997 FORD F450 PF	FORD	F-450 SPR	3FELF47G3VMA46035	5K60739	LIC SURRENDER	BREEDER
5889	ROTOTILLER	BEFCO	T60-274	209792		ALTA RANCH	BREEDER
5899	ROTOTILLER	BEFCO	T60-274	210959		CAMPBELL MTN	BREEDER
6001	GOOSENECK TRLR	SPCNS		CA624639	4AN3161	TKY BREEDERS	BREEDER
6066	3 YARD SCRAPER	EVERSMEN	2S	2S 161		TWIN PALMS TK	BREEDER
6087	1987 GENERATOR					ALTA RANCH	BREEDER
6096	265 GAL SPRAYER	THORNE	COMET AZ 9	N69 0185		SMITH MOUNTAIN	BREEDER
6113	1983 SCRAPER	6FT.BOX SC	MF18	1406003357		TWIN PALMS TK	BREEDER
6150	1990 SCRAPER	EVERSMAN				ALTA	BREEDER
6169	SPRAYER 390 GALLO	GEARMORE	GS 300 SSR	ATE 049 51		CENTRAL DARK	BREEDER
6226	BOX SCRAPER	SOUTHEAST	BIG OX	95913		CAMPBELL MTN	BREEDER
6369	SPRAYER - 550 GAL	CROPLINER	200 DL	12118		SIMERLY RNCH	BREEDER
6382	SPRAYER	REARS	MB536	MO2-136		HAYES RANCH	BREEDER
6437	1987 BOX SCRAPER	SOUTHEAST	BIG OX			SMITH MOUNTAIN	BREEDER
6469	SPRAYER 390 GALLO	GEARMORE	400 SSR	ATE 0113H		SIMERLY	BREEDER
6623	1972 TRAILER	WTFLD	MODIFIED	62902	4FC4135	HAYES-PNO	BREEDER
6649	SCRAPER/HYDRAULIC	EVERSMAN	2S	25169		HAYES TKY RAN	BREEDER
6669	72" ROTARY MOWER	BUSH HOG	SQ72R-3	1107160		HAYES	BREEDER
6679	1989 SWEEPER	SWEEPSTER	RHFA	891311		HAYES	BREEDER
6710	BOX SCRAPER	G & M LINE	2012-8HD	35411892012-8HD-35		SIMERLY	BREEDER
6721	GENERATOR	DETROIT DI	371	A35279TK		SMITH MOUNTAIN	BREEDER
6981	TURKEY HAULER	SPCNS		CA642766		CENTRAL REPL	BREEDER
6991	TILT TRAILER	SPCNS	TILT TRAIL	CAL15058	E391637	BREEDERS	BREEDER
7011	1981 FARM TRACTOR	MASSEY FER	230	9A340191	UR 1304	HAYES RANCH	BREEDER
7057	MURPHY GENERATOR	MURPHY		91728-3	187963	SMITH MOUNTAIN	BREEDER
7058	GENERATOR	MURPHY	200207	22155		CAMPBELL	BREEDER
7077	TRANSPORT AUGER	GT 34	80-18834R	7002		SMITH MOUNTAIN	BREEDER
7106	1986 6' DISC	G & M	3.0 OFFSET	416-201-786		CENTRAL RANCH	BREEDER
7119	DISK					SMITH MOUNTAIN	BREEDER
7213	1993 FARM TRACTOR	KUBOTA	M7030/M503	70770		SIMERLY RANCH	BREEDER
7221	AI08512 BUSH HOG	AI08512	ROTARY			CENTRAL	BREEDER
7251	GENERATOR	SQ172	MOW	12-13266		TURKEY BREEDE	BREEDER
7281	2000 KUBOTA TRACT	KOHLER ELE		320408			BREEDER
7341	TURKEY HAULER	SPCNS	KUBOTA	CA642848	E391692	TKY BREEDERS	BREEDER
7351	TURKEY HAULER	SPCNS		CA642857	E617259	SMITH MTN REP	BREEDER
7440	1990 CUTTER	BUSH HOG	BUSH HOG			ALTA	BREEDER
7449	1989 BUSH HOG MOW	BUSH HOG	SQ72R-3	1107688		SIMERLY	BREEDER
7450	1990 SWEEPER	GEARMORE	R-HF			ALTA	BREEDER
7460	1990 SCRAPER	CHAPIN	8' BOX			ALTA	BREEDER
7472	2002 ROTOTILLER	BEFCO	T60-274	229586		HAYES RANCH	BREEDER
7480	1990 SPRAYER	MINI BLAST	500 GAL			ALTA	BREEDER
7487	1987 55KW GENERAT	JOHN DEERE	55KW	4FJ147379		HAYES RANCH	BREEDER
7598	1988 GENERATOR	L7760-19 D	F0459300	4239TF001		CENTRAL LAY	BREEDER
7608	SWEEPER	SWEEPSTER	R-HFAC-6	870618		CENTRAL RANCH	BREEDER



EQUIP #	DESCRIPTION	MAKE	MODEL	SERIAL NUMBER	LIC #	OPERATOR	GL Code Description
7628	1987 SCRAPER	EVERSMAN	2ST	2ST166		CENTRAL RANCH	BREEDER
7638	1988 BUSH HOG	BUSH HOG	72" ROTARY	1103717		CENTRAL RANCH	BREEDER
7648	6FT BOX SCRAPER			BB72-1-1		CENTRAL LAY	BREEDER
7658	3FT DISC	CROPLINER	G&M	414-215-1187		CENTRAL RANCH	BREEDER
7668	550 GAL SPRAYER	S & A MFG	2000	12008		CENTRAL LAY	BREEDER
7678	S&A FEED CART	KUBOTA	GFC674	2637		CENTRAL LAY	BREEDER
7702	TILLER	KUBOTA	BL60C	31532		SMITH MTN.	BREEDER
7703	2003 BEFCO TILLER	BEFCO	T-60	238757		CENTRAL LAY	BREEDER
7727	1987 SWEEPSTER	SWEEPSTER	RHFAC6	98597		SMITH MOUNTAIN	BREEDER
7737	G&M DISC	G&M OFFSET	414	414-213-0487		HAYES	BREEDER
7747	BEFCO TILLER	BEFCO	11-266-23X	102944		SMITH MOUNTAIN	BREEDER
7757	BUSH HOG	BUSH HOG	SQ72R-3	1100384		SMITH MOUNTAIN	BREEDER
7801	FEED CART				187850	TWIN PALMS BR	BREEDER
7883	24KW GENERATOR	MURPHY	800419	897503		TWIN PALMS BR	BREEDER
7902	FARM TRACTOR	KUBOTA	L3010 GST	76048		SMITH MTN.	BREEDER
7905	STEAM CLEANER P	HYDRO-BOSS	ST-35004VG	200500618		TURKEY BREED	BREEDER
7965	FARM TRACTOR	KUBOTA	L3130 GST	51727-113		CENTRAL DARK	BREEDER
7966	ROTOTILLER	KUBOTA	BL 60C	31744		CENTRAL DARK	BREEDER
7977	CROPLINER SPRAYER	ANNOVI REV	2000	11902		TWIN PALMS	BREEDER
7982	1992 FARM TRACTOR	KUBOTA	M8030DT	60329		SMITH MTN	BREEDER
7992	1991 FARM TRACTOR	KUBOTA	M8030DTL	60168		CENTRAL LAY	BREEDER
8004	500 GAL SPRAYER	REARS	LB536	M944073		SMITH MTN	BREEDER
8012	84" BOX SCRAPER	BUSH HOG	SBX-840	12-00042	10956R	TWIN PALMS BR	BREEDER
8037	EVERSMAN						
8037	SOILMOVE	EVERSMAN 2	2S	165		CENTRAL LAY	BREEDER
8059	1999 9/OFFSET DIS	DOMRIES	EH 10-9940	M-5425		SMITH MOUNTAIN	BREEDER
8355	1995 500 GAL SPRA	MINI BLAST	MB500 36	M903272		CAMPBELL MOUN	BREEDER
8496	2006 CLUB CAR	UTILITY LI	CCUL-06	PQ0719-756391		CENTRAL LAY	BREEDER
8539	1999 FARM TRACTOR	KUBOTA	M9000DTL	50056		CAMPBELL MTN	BREEDER
8541	SOILMOVER	SOILMOVER	SM35	1H9-17009		SIMERLY RANCH	BREEDER
8685	1975 GENERATOR	DELCO A/C	YE-5392-20	47-A-63		CENTRAL DARK	BREEDER
8688	GOLF CART-REFURBI					TWIN PALMS	BREEDER
8698	GOLF CART-REFURBI					SMITH MT.	BREEDER
8834	5' LITTER GITTE	PRIEFERT	T75	404		TWIN PALMS	BREEDER
8839	1999 LITTER GITTE	PRIEFERT	90	1560		CENTRAL DARK	BREEDER
8869	1999 LITTER GITTE	PRIEFERT	90	1557		SMITH MOUNTAIN	BREEDER
8879	1999 FARM TRACTOR	KUBOTA	M9000DT	50480		HAYES TURKEY	BREEDER
8891	1991 LITTER GITTE	PRIEFERT				TWIN PALMS	BREEDER
8991	5' LITTER GITTE	PRIEFERT				SIMERLY	BREEDER
9372	CENTRAL TKY MISC		T-75-063	4619412		CENTRAL LAY	BREEDER
9382	ALTA TKY MISC					ALTA	BREEDER
9460	2000 FARM TRACTOR	KUBOTA	M9000DTL	M90050130		ALTA RANCH	BREEDER
9470	2000 SQUEALER	BUSH HOG	SQ6000	12-11528		TWIN PALMS	BREEDER
9481	2001 GENERATOR W/	CUMMINS	DGFC-49618	FO10255071		HAYES	BREEDER
9491	2001 GENERATOR W/	CUMMINS	DGFC-49618	FO10255073		CAMPBELL MTN.	BREEDER
9561	2001 GENERATOR W/	CUMMINS	DGFC-49618			TWIN PALMS	BREEDER
9620	1990 GENERATOR	LISTER	3165-0009	A80925BA		SMITH MTN.TOM	BREEDER

**Schedule 2.1(i)**  
**Intellectual Property Rights**

**Marks**

U.S. Applications / Registrations

Mark	Filing Date	Reg. No./Issue Date	Status
THE WESTERNER	2/28/2011	App. No. 85253535	Current/Live
THE CALIFORNIAN	4/18/2011	4045537 - 10/25/2011	Current/Live
TENDER GOLD	4/18/2011	4031760 - 9/27/2011	Current/Live
ZACKY FARMS (STYLIZED)	2/1/1985	1351943 - 7/30/1985	Current/Live
ZACKY FARMS	8/23/2002	2781924 - 11/11/2003	Current/Live
SAMUEL'S RANCH	12/17/2012	App No. 85804435	Pending
INTERNATIONAL POULTRY	12/17/2012	App No. 85804398	Pending

California Registrations

Mark	Issue Date	Reg. No.	Status
QUIK'N LEAN	1/5/2001	106948	Current/Live
TENDER GOLD	7/22/1999	105299	Current/Live
POPPY	7/22/1999	105301	Current/Live
SOUP'R CHICKEN	7/22/1999	105298	Current/Live
CULINARY CLASSICS	7/22/1999	105297	Current/Live
INTERNATIONAL POULTRY	7/22/1999	105296	Current/Live
ZACKY FARMS	2/19/1985	75993	Current/Live

**Domain Name**

Domain Name	Expiration Date	Registrant
www.zacky.com	expires 9/18/2014	Joe Zacky PO Box 12556 Fresno, CA 93778
www.zackyfarms.com	expires 11/6/2014	Joe Zacky PO Box 12556 Fresno, CA 93778

**Trade Names**

Zacky  
Zacky Farms



**Schedule 2.1(I)**  
**Permits and Licenses**

<b>License / Permit</b>	<b>Permitting Agency</b>	<b>Location</b>	<b>Date of Issue</b>	<b>Date of Expiration / Renewal</b>	<b>Acct./ Certificate No.</b>
PSM/RMP	US EPA	Turkey Plant	06/25/09	06/25/14	EPA #1000 0013 9021, Anhydrous Ammonia
PSM/RMP	US EPA	Empire (West)	06/25/09	06/25/14	EPA #1000 0013 9076, Anhydrous Ammonia
PSM/RMP	US EPA	Empire (East)	06/25/09	06/25/14	EPA #1000 0013 8059, Anhydrous Ammonia
Haz Mat Business Plan	Fresno County Environ Health	Turkey Plant	03/09/11	03/09/14	Fac # FA 0169345
Haz Mat Business Plan	Fresno County Environ Health	Empire	06/27/08	12/31/12	Fac # FA 0268250 (due for renewal)
HAZ MAT DISPOSAL	CAL DTSC	Empire	on going	on going	CAL EPA # CAL922262476, established 20+ yrs ago
HAZ MAT DISPOSAL	CAL DTSC	Turkey Plant	on going	on going	CAL EPA # CAL920784019, established 20+ yrs ago
Pressure vessel operating permit	Cal OSHA	Turkey Plant	08/28/10	08/28/13	Permit # L016364-07, for propane tank
Pressure vessel operating permit	Cal OSHA	Turkey Plant	05/05/12	05/05/13	Permit # B016363-07, for boiler # 1
Pressure vessel operating permit	Cal OSHA	Turkey Plant	05/05/12	05/05/13	Permit # B016389-07, for boiler # 2

License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Pressure vessel operating permit	Cal OSHA	Empire	03/23/10	03/22/13	Permit # L027316-96, for propane tank
Pressure vessel operating permit	Cal OSHA	Empire	11/05/11	11/05/12	Permit # B014827-09, for boiler
Special Hazard Material	City of Fresno	Empire	08/11/09	09/01/11	Fire Dept permit # 14149
PEER	SJVUAPCD (Air District)	Turkey Plant		05/15/14	Permit Exempt Equipment Registration (Boiler) C-2074-1-0
PEER	SJVUAPCD (Air District)	Empire	08/25/09	08/25/14	Permit Exempt Equipment Registration (Boiler) C-7831-1-0
Devise Registration	County of Fresno	Turkey Plant	02/01/10	12/31/11	Weights & Measures, Scale
Weigh Master	Cal Dept Food & Agriculture	Turkey Plant	07/01/12	07/01/13	Deputy Weigh Masters
PDA/PL	Cal Dept Food & Agriculture	Both	01/01/10	01/01/11	Processor License, A17629
Unified Program Facility Permit	Fresno County Public Health	Turkey Plant	01/01/12	12/31/12	#16943/49190, ext haz sub handler
Unified Program Facility Permit	Fresno County Public Health	Turkey Plant	01/01/12	12/31/12	#16944/54890, haz waste gen
Unified Program Facility Permit	Fresno County Public Health	Turkey Plant	01/01/12	12/31/12	#16945/54891, CalArp RMP
Fire Prevention Permit	City of Fresno	Turkey Plant	09/01/09	09/01/10	Permit # 21333
Pressure vessel operating permit	Cal OSHA	Turkey Plant	06/24/12	06/24/17	Permit #A001422-98, Air Pressure Tank



License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Pressure vessel operating permit	Cal OSHA	Turkey Plant	06/26/12	06/26/17	Permit #A001421-98, Air Pressure Tank
Inedible Permit	Cal Dept Food & Agriculture	Turkey Plant	11/10/03	until revoked	
WasteWater Discharge Permit	City of Fresno	Turkey Plant	05/18/12	05/18/13	#FI(e)-85591
WasteWater Discharge Permit	City of Fresno	Empire	05/18/12	05/18/13	#FI(e)-109607
Pressure vessel operating permit	Cal OSHA	Empire	06/26/12	06/26/17	Permit #A001595-96, Air Pressure Tank
Pressure vessel operating permit	Cal OSHA	Empire	06/24/12	06/24/17	Permit #A001650-90, Air Pressure Tank
Unified Program Facility Permit	Fresno County Public Health	Empire	06/30/12	06/30/13	#14881/49167, ext haz sub handler
Unified Program Facility Permit	Fresno County Public Health	Empire	06/30/12	06/30/13	#14882/55761, haz waste gen
Unified Program Facility Permit	Fresno County Public Health	Empire	06/30/12	06/30/13	#14883/59237, CalArp RMP
Pressure vessel operating permit	Cal OSHA	Stockton		06/18/16	Permit #A016303-96, Air Pressure Tank
Pressure vessel operating permit	Cal OSHA	Stockton		06/18/16	Permit #A022389-74, Air Pressure Tank
Pressure vessel operating permit	Cal OSHA	Stockton		06/18/13	Permit #B022388-74, Boiler



License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Pressure vessel operating permit	Cal OSHA	Stockton			Permit # , LPG Tank
Waste Water Discharge Permit	City of Stockton	Stockton	09/01/10	08/31/15	As specified in 40 CFR 403.3
Slug Discharge Control Plan	City of Stockton	Stockton	11/26/12	11/25/13	As specified in 40 CFR 403.5
Storm Water Pollution Prevention Plan	State of California Regional Water Quality Control Board	Stockton	on-going with renewal fees paid		WDID # 5S39I013719
Permit to Operate	SJVUAPCD (Air District)	Stockton		11/30/13	N-715-2-3, 15.7 MMBTU Boiler
Haz Mat Management Plan	San Joaquin County OES	Stockton	12/27/11	03/01/13	Facility 8251
Environmental Health permit	San Joaquin Co. Envir Health	Stockton		12/31/12	PT0010565
Fire Permit	City of Stockton Fire Dept	Stockton		03/02/13	64089/69503 42906
Business License Tax Cert	City of Stockton	Stockton		03/31/13	(2), 12-00050380 0042781 & 12-00055300 0047255
HAZ MAT DISPOSAL	CAL DTSC	Stockton	on going	on going	CAL EPA # CAL00128476
CalARP RMP	San Joaquin County	Stockton	08/05/10	08/05/15	
Storm Water Pollution Prevention Plan	State of California Regional Water Quality Control Board	Garage	on-going with renewal fees paid		WDID # 5F10I004630
HAZ MAT DISPOSAL	CAL DTSC	Annex	on going	on going	CAL EPA # CAL000353062
Pressure vessel operating permit	Cal OSHA	Hatchery	01/04/12	10/23/14	Permit A028668-04, Air pressure tank



License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Pressure vessel operating permit	Cal OSHA	Hatchery	01/04/12	10/23/14	Permit A008742-82, Air pressure tank
Pressure vessel operating permit	Cal OSHA	Hatchery	10/23/09	10/23/14	Permit A014838-09, Air pressure tank
Permit to Operate	SJVUAPCD (Air District)	Brawley Ranch	01/23/12	12/31/14	C-5409-1-2, C-5409-2-2 plus CMP's
Pressure vessel operating permit	Cal OSHA	Brawley Ranch	09/08/11	09/07/16	Permit L001463-98, LPG tank
Pressure vessel operating permit	Cal OSHA	Brawley Ranch	09/08/11	09/07/16	Permit L001815-87, LPG tank
Pressure vessel operating permit	Cal OSHA	Brawley Ranch	09/08/11	09/07/16	Permit L001814-87, LPG tank
Pressure vessel operating permit	Cal OSHA	Brawley Ranch	09/08/11	09/07/16	Permit L001813-87, LPG tank
Pressure vessel operating permit	Cal OSHA	Brawley Ranch	09/08/11	09/07/16	Permit L001811-87, LPG tank
Permit to Operate	SJVUAPCD (Air District)	G & H Ranch	01/23/12	12/31/14	C-7306-1-2, C-7306-2-2 plus CMP's
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003399-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003396-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003397-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003398-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003400-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003401-08, LPG



License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003402-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003403-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit L003404-08, LPG
Pressure vessel operating permit	Cal OSHA	G & H Ranch	02/05/08	02/04/13	Permit A003395-08, Air pressure tank
Permit to Operate	SJVUAPCD (Air District)	Kent Ranch	01/12/12	12/31/14	C-5406-1-2, C-5406-2-2 plus CMP's
Pressure vessel operating permit	Cal OSHA	Kent Ranch			LPG
Haz Mat Business Plan	Kings County Envir Health	Kent Ranch	06/01/12	06/01/15	FA00000673
Cond Use Permit	Kings County	Kent Ranch	01/03/89	on-going	CUP# 1495
Permit to Operate	SJVUAPCD (Air District)	Holm Ranch	01/31/12	12/31/14	C-5410-1-2, C-5410-2-2 plus CMP's
Pressure vessel operating permit	Cal OSHA	Holm Ranch			LPG
Haz Mat Business Plan	Kings County Envir Health	Holm Ranch	06/01/12	06/01/15	FA00000553
Cond Use Permit	Kings County	Holm Ranch		on-going	
Permit to Operate	SJVUAPCD (Air District)	18th Ranch	01/31/12	12/31/14	C-5404-1-2, C-5404-2-2 plus CMP's
Pressure vessel operating permit	Cal OSHA	18th Ranch			LPG
Haz Mat Business Plan	Kings County Envir Health	18th Ranch	06/01/12	06/01/15	FA00000600
Cond Use Permit	Kings County	18th Ranch	01/03/89	on-going	CUP # 1496



License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Permit to Operate	SJVUAPCD (Air District)	6th Ranch	01/31/12	12/31/14	C-5412-1-2, C-5412-2-2 plus CMP's
Pressure vessel operating permit	Cal OSHA	6th Ranch			LPG
Pressure vessel operating permit	Cal OSHA	6th Ranch			LPG
Pressure vessel operating permit	Cal OSHA	6th Ranch			LPG
Pressure vessel operating permit	Cal OSHA	6th Ranch			Air Tank
Haz Mat Business Plan	Kings County Envir Health	6th Ranch	05/31/12	05/31/15	FA0002119
Conservation Management Plan	SJVUAPCD (Air District)	Experimental	01/01/05	continuous	C-5401-CMPP-0, CMP's only
Pressure vessel operating permit	Cal OSHA	Experimental			LPG
Pressure vessel operating permit	Cal OSHA	Experimental			LPG
Cond Use Permit	Fresno County	Litter Yard		continuous	
Business License	City of Fresno	Empire	10/06/01	continuous	#169159
Business License	City of Kerman	Hatchery	01/01/13	12/31/13	#12-3186
Business License	City of Los Angeles	Crossroads	04/04/10	continuous	#998257-0001-0
Business Tax Certificate	City of Oakland			12/31/2012	#695769
Business License	City of Pico Rivera			12/31/2012	#28151
Business Tax Certificate	City of Riverside			12/31/2012	#BL00006762
Health Permit	City of Vernon Health Dept.		08/30/2012	06/30/2013	Facility ID: FA0000819 (wholesale food truck)
Pressure vessel operating permit	Cal OSHA	Alta			

License / Permit	Permitting Agency	Location	Date of Issue	Date of Expiration / Renewal	Acct./ Certificate No.
Pressure vessel operating permit	Cal OSHA	Central Lay			LPG
Pressure vessel operating permit	Cal OSHA	Central Dark			LPG
Pressure vessel operating permit	Cal OSHA	Hayes			LPG
Pressure vessel operating permit	Cal OSHA	Simerly			LPG
Pressure vessel operating permit	Cal OSHA	Simerly			LPG
Pressure vessel operating permit	Cal OSHA	Smith Mnt			LPG
Pressure vessel operating permit	Cal OSHA	Smith Mnt 3			LPG
Pressure vessel operating permit	Cal OSHA	Twin Palms			LPG
Pressure vessel operating permit	Cal OSHA	Twin Palms			LPG
Pressure vessel operating permit	Cal OSHA	Twin Palms			LPG
Pressure vessel operating permit	Cal OSHA	Campbell Mnt			LPG





**Schedule 3.3**  
**Required Governmental Authorizations**

None.

**Schedule 3.5**  
**Required Consents**

None.

**Schedule 3.6**  
**Litigation**

Caption of Suit and Case Number	Nature of Proceeding	Court and Location	Status or Disposition
Foster Poultry Farms v. Zacky Farms, Inc., Adversary Proceeding No. 12-02672	Complaint for breach of contract and unfair competition	U.S. Bankruptcy Court, Eastern District of California	Pending
Philcohn, Inc. v. Zacky Farms, LLC, Case No. 37-2012-00091880-CUSC-CTL	Complaint for breach of contract	Superior Court of the State of California in and for the County of San Diego	Judgment was entered against Zacky Farms for \$23,250 on July 30, 2012.
Carter, Alvin v. Zacky Farms, Case No. ADJ3498080	Workers Compensation	Fresno Workers Compensation Appeals Board	Workers compensation claim contested by Zacky Farms. Matter pending before the WCAB.
Gonzalez, Isidro v. Zacky Farms, Case No. ADJ7352163	Workers Compensation	Fresno Workers Compensation Appeals Board	Case settled for \$1000. Will close in the next 30 days.
Mancha, John v. Zacky Farms ADJ7989853	Workers Compensation	Fresno Workers Compensation Appeals Board	Workers compensation claim contested by Zacky Farms. Matter pending before the WCAB.
Reinhardt, Joseph v. Zacky Farms, Case Nos. ADJ7888333 & ADJ7831912	Workers Compensation	Stockton Workers Compensation Appeals Board	Workers compensation claim contested by Zacky Farms. Matter pending before the WCAB.



Caption of Suit and Case Number	Nature of Proceeding	Court and Location	Status or Disposition
Sanchez, Jesus v. Zacky Farms, Case No. ADJ8328229	Workers Compensation	Ventura Workers Compensation Appeals Board	Workers compensation claim contested by Zacky Farms. Matter pending before the WCAB.
Soto, Juana v. Zacky Farms Case No. ADJ8037779	Workers Compensation	Fresno Workers Compensation Appeals Board	Workers compensation claim contested by Zacky Farms. Matter pending before the WCAB.
Torrecillas, Minerva v. Zacky Farms Case No. ADJ8344658	Workers Compensation	Fresno Workers Compensation Appeals Board	Workers compensation claim contested by Zacky Farms. Matter pending before the WCAB.
Cruz, Richard v Zacky Farms, LLC, Case No. 39-2010-00244196-CU-PL-STK	Personal Injury	San Joaquin County Superior Court	Pending. Zacky Farms' defense is being provided by Nationwide Agribusiness insurance. Mr. Cruz has agreed to forego any claim against Zacky Farms and limit his recovery to Zacky's insurance policy.

**Schedule 3.7**

**Challenges, Infringements and Licenses of Intellectual Property Rights**

**Challenges**

On November 20, 2012, Foster Poultry Farms (“Foster”) filed a complaint against Seller alleging that Seller has breached the purchase and trademark agreements between the parties by offering chicken products for sale under the Zacky Farms trademark (Registration No. 1351943).

Foster’s adversary proceeding against Seller seeks (i) a judgment in favor of Foster and against Seller for breach of the purchase and trademark agreements; (ii) a preliminary and permanent injunction preventing Seller from selling chicken under the disputed trademark name; (iii) a judgment in favor of Foster and against Seller for unfair competition; (iv) disgorgement of any revenues derived from Seller’s allegedly wrongful actions; and (v) Foster’s costs of the lawsuit and other expenses and costs of litigation, including attorney’s fees.

**Infringements**

None.

**Licenses**

None.

**Schedule 3.8**  
**Permits**

See Schedule 2.1(1).



**Schedule 3.10**  
**Environmental Matters**

1. Those certain Phase I and Phase II Environmental Site Assessments, Zacky Farms, LLC, Stockton Plant, 1111 Navy Drive, Stockton, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated October 13, 1995.
2. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Stockton Plant, 1111 Navy Drive, Stockton, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated April 26, 2007.
3. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Sunbird (leased property), 5606 E. Davis Avenue, Laton, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated November 8, 2006.
4. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Samuel Brood (leased property), 9633 Niles Avenue, Corcoran, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated February 23, 2006.
5. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Samuel Grow and Big Feather (leased properties), 11005 and 11009 Nevada Avenue, Corcoran, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated February 24, 2006.
6. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Mars (leased property), 8777 Road 88, 8631 Road 88 and 8688 Road 84, Pixley, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated January 9, 2007.
7. Those certain Phase I and Phase II Environmental Site Assessments, Zacky Farms, LLC, Kerman Turkey (leased property), 25757 W. Whitesbridge Avenue, Kerman, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated June 4, 2007.
8. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Florence Warehouse, 2272 S. East Avenue, Fresno, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated April 8, 2008.
9. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Vacant Land in Hanford, California, PTN of N ½ of NE ¼ SEC 24/19/21, Hanford, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated May 29, 2008.
10. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, G & H, 8351 McMullin Grade, Fresno, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated June 6, 2006.

11. That certain Phase I Environmental Site Assessment, Zacky Farms, LLC, Empire Facility and Corporate Offices, 2950 E. California Street, Fresno, California and 2020 S. East Avenue, Fresno, California, prepared for Zacky Farms, LLC, prepared by Krazan & Associates, Inc., dated April 26, 2007.

**Schedule 3.11**  
**Exceptions to Real Property**

Except as otherwise provided for in the title reports for the Acquired Real Property, none.



**Schedule 5.1**  
**Ordinary Course Exceptions**

None.

**Schedule 5.5**  
**Employee Benefit Plans**

**Plans**

**Self-Funded Medical Insurance Plan**

- a. **Medical**  
Preferred Provider Network (PPO) style plan. Seller contracts with HealthComp Administrators, Inc. ("HealthComp") to provide third-party administrative services for the Health Plan. HealthComp contracts with Anthem Blue Cross to allow Seller to have access to the preferred Blue Cross billing rates.
- b. **Prescription**  
Seller contracts with Restat, LLC ("Restat") to provide third-party managed pharmacy benefit services. The agreement with Restat provides for claims processing and access to Restat's contracted retail, mail order and specialty network pharmacies.
- c. **Dental**  
Network is MetLife/SafeGuard DMO
- d. **Vision**  
Employee may submit receipts to HealthComp for reimbursement.

**Retirement Plans**

"Union Only" 401-K Plan

"Non-Union Only" 401-K Plan

**Life and AD&D Insurance Plan**

Seller contracts with Sun Life Insurance Company of Canada to provide life and accidental death and dismemberment insurance. Salaried employees have the option to purchase supplemental life and long-term disability insurance at their own cost.

**Workers Compensation Plan**

Seller maintains a self-insurance program for the payment of workers' compensation claims. Seller contracts with Acclamation Insurance Management Services to provide third-party administrative services for this plan. CorVel Healthcare Corporation provides third-party medical cost containment and managed care services for the plan.

**Collective Bargaining Agreements**

Seller entered into those certain Collective Bargaining Agreements with United Food & Commercial Workers Union 8-Golden State for its Fresno, California and Stockton, California locations (each a "Collective Bargaining Agreement"). The Fresno, California Collective Bargaining Agreement is in effect from March 1, 2011 to March 31, 2014. The Stockton, California Collective Bargaining Agreement is in effect from March 1, 2011 to October 31, 2014.

**Other**

Healthcare Flexible Spending Account

Dependent Care Flexible Spending Account

Non-Compliance  
None.



## EXHIBIT A

**Zacky Farms, LLC**  
**Weekly Cash Flow Forecast**  
*As of 2/6/13*

Forecast Week:

Week-Ending:

(\$ in 000s)

	1 8-Feb Forecast	2 15-Feb Forecast	3 22-Feb Forecast	4 1-Mar Forecast	4 Week Total Forecast
<b>Total Sales</b>	\$ 2,960.2	\$ 2,331.3	\$ 2,183.0	\$ 2,234.4	\$ 9,708.8
Sales Receipts	2,060.0	2,060.0	2,060.0	2,960.2	9,140.1
	\$ 2,060.0	\$ 2,060.0	\$ 2,060.0	\$ 2,960.2	\$ 9,140.1
<b>Disbursements</b>					
Feed	\$ 1,117.1	\$ 1,135.2	\$ 1,059.7	\$ 1,078.6	\$ 4,390.6
Salaries	693.0	500.0	693.0	500.0	2,386.0
Contract Grower Pay	15.7	17.7	16.6	16.4	66.4
Outside Raw Material Purchases	250.0	250.0	250.0	250.0	1,000.0
Other Live Costs	119.2	122.2	120.5	120.2	482.1
Affiliate Ranch Leases	186.0	-	-	186.0	372.1
Debt Service	257.4	-	-	296.4	553.9
Capital Expenditures	62.5	62.5	62.5	62.5	250.0
Transportation	79.4	82.8	78.7	80.1	321.0
Utilities <sup>1</sup>	43.7	265.3	67.2	61.9	438.2
Packaging	311.6	316.6	163.8	163.3	955.4
Repairs & Maintenance	125.0	125.0	125.0	125.0	500.0
SG&A	283.6	161.6	160.0	175.1	780.4
Other	125.0	125.0	125.0	125.0	500.0
<b>Professional Fees and Other:</b>					
Debtor Financial Advisors <sup>1</sup>	\$ 125.0	\$ 834.1	\$ 125.0	\$ 125.0	\$ 1,209.1
Debtor Counsel <sup>1</sup>	50.0	373.9	50.0	50.0	523.9
Debtor Investment Banker	-	-	-	-	-
Debtor Transaction Counsel <sup>1</sup>	125.0	562.5	125.0	125.0	937.5
DIP Professionals	37.5	37.5	37.5	37.5	150.0
Debtor Claims Agent	-	15.0	-	-	15.0
<b>Debtor and DIP Lender Professional Fees</b>	\$ 337.5	\$ 1,823.0	\$ 337.5	\$ 337.5	\$ 2,835.5
Committee Professional Fees <sup>1</sup>	\$ 10.0	\$ 90.0	\$ 10.0	\$ 10.0	\$ 120.0
US Trustee Fees	-	-	-	30.0	30.0
Collateral Monitoring Fee	25.0	-	-	25.0	50.0
<b>Total Disbursements</b>	\$ 4,041.9	\$ 5,076.9	\$ 3,269.5	\$ 3,643.1	\$ 16,031.5
<b>Operating Cash Flow</b>	\$ (1,981.9)	\$ (3,017.0)	\$ (1,209.6)	\$ (683.0)	\$ (6,891.4)
Cumulative Operating Cash Flow (Current Forecast)	\$ (1,981.9)	\$ (4,998.9)	\$ (6,208.4)	\$ (6,891.4)	\$ (6,891.4)
Cumulative Operating Cash Flow (DIP Period with Actual)	\$ (4,861.1)	\$ (7,878.0)	\$ (9,087.6)	\$ (9,770.6)	
<b>Loan Structure</b>					
<b>Pre-Petition Loan:</b>					
<b>Beginning Balance</b>	\$ 1,800.4	\$ -	\$ -	\$ -	\$ 1,800.4
Borrowing Needs - Draw / (Paydown)	(1,800.4)	-	-	-	(1,800.4)
<b>Ending Balance</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Post Petition Loan:</b>					
<b>Beginning Balance</b>	\$ 57,300.0	\$ 61,082.3	\$ 64,099.3	\$ 65,308.8	\$ 57,300.0
Facility Front End Fee	-	-	-	-	-
Collateral Provided for Letter of Credit	-	-	-	-	-
Borrowing Needs - Draw / (Paydown)	3,782.3	3,017.0	1,209.6	683.0	8,691.8
<b>Ending Balance</b>	\$ 61,082.3	\$ 64,099.3	\$ 65,308.8	\$ 65,991.8	\$ 65,991.8
<b>Total Outstanding Debt</b>	\$ 61,082.3	\$ 64,099.3	\$ 65,308.8	\$ 65,991.8	\$ 65,991.8
Accrued/Unpaid Admin Claims (excluding Prof Fees)	\$ 2,117.1	\$ -	\$ -	\$ -	\$ 2,117.1
Outstanding Deposits to be Recovered Post-Close	\$ 740.0	\$ -	\$ -	\$ -	\$ 740.0

<sup>1</sup> Amount in the week ending February 15, 2013 includes accrued and unpaid liabilities.

**EXHIBIT B**

**FORM OF CREDITOR RECOVERY NOTE & SECURITY AGREEMENT**

\$3,500,000

Los Angeles, California  
[•], 2013

FOR VALUE RECEIVED, [•], a [•] (the “Purchaser”), hereby unconditionally promises to pay, in the manner set forth below, for the benefit of ZACKY FARMS, LLC (the “Seller”), the principal sum of THREE MILLION FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$3,500,000.00) (as such amount may be increased or reduced from time to time pursuant to Sections 3 and 4 hereof (as applicable), the “Principal Sum”), plus interest on the Principal Sum as set forth in Section 1 hereof. All capitalized terms which are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of February 6, 2013, by and between The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988 and Seller (the “Asset Purchase Agreement”).

1. **Interest.** Interest on the unpaid principal amount of this Note & Security Agreement outstanding from time to time shall accrue from the date hereof to and including the date on which the outstanding principal and accrued and unpaid interest is paid in full, at the interest rate of four percent (4%) per annum, payable quarterly in arrears on each of (a) the date that is ninety (90) days from the date hereof, (b) the date that is one hundred eighty (180) days from the date hereof, (c) the date that is two hundred seventy (270) days from the date hereof, (d) the date that is three hundred sixty (360) days from the date hereof, (e) the date that is four hundred fifty (450) days from the date hereof, (f) the date that is five hundred forty (540) days from the date hereof, (g) the date that is six hundred thirty (630) days from the date hereof, and (h) the date that is the two (2) year anniversary of the date hereof. If any such date shall be a day other than a Business Day, then such interest shall be payable on the next Business Day after such date. All interest hereunder shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed.

2. **Repayment of Principal.** The Principal Sum shall become due and payable on the date that is the two (2) year anniversary of the date hereof (the “Maturity Date”).

3. **Increase of Principal.** From time to time (upon the accrual, occurrence or payment of such amounts or obligations), the Principal Sum of this Note shall be automatically increased by an amount equal to all damages, obligations, liabilities, costs (including, without limitation, defense costs), fees (including, without limitation, legal fees) and other amounts paid or payable by the Seller or its bankruptcy estate on account of, related to or otherwise arising from either of the Asset Purchase Agreements (Lots 1 and 2) entered into between the Seller and Pitman (collectively, the “Pitman Purchase Agreements”), including, without limitation, any such damages, obligations, liabilities, costs, fees or other amounts resulting from any breach or alleged breach of the Pitman Purchase Agreements by the Seller.

4. **Prepayment.** The Purchaser at any time or from time to time may prepay, in cash, the unpaid principal amount of or interest on this Note & Security Agreement, in whole or in part, without penalty or premium. If Purchaser shall sell any Collateral (as defined below) with net proceeds of no less than \$50,000 other than in the ordinary course of business, the proceeds of such sale shall be applied to the prepayment of this Note & Security Agreement, to the extent there are any amounts outstanding hereunder. Any net amount of insurance proceeds received on account of the Collateral remaining after the cost of replacement of such Collateral shall be applied to the prepayment of this Note & Security Agreement, to the extent there are any amounts outstanding hereunder.

5. **Manner of Making Payments.** Payment of any amounts hereunder (whether principal or interest) shall be made to Seller in United States dollars by wire transfer of immediately available funds not later than 2:00 p.m., Los Angeles, California time, on the date such payment is due, to such bank account as Seller may from time to time designate in writing.

6. **Application of Payments.** All payments made hereunder shall be applied first to accrued and unpaid interest and then to the unpaid principal amount hereof (which shall reduce the then current Principal Sum).

7. **Pledge of Collateral.** As collateral security for the prompt and complete payment of the Purchaser's obligation under this Note & Security Agreement (whether at the stated maturity, by acceleration, or otherwise), the Purchaser hereby grants to Seller a continuing security interest in the collateral set forth on Schedule A hereto (the "Collateral"). The Purchaser hereby irrevocably authorizes Seller, at any time and from time to time, to file in any appropriate filing office, wherever located, any financing statement describing the Collateral that contains any information required by the Uniform Commercial Code of the applicable jurisdiction for the sufficiency or filing office acceptance of any financing statement. The Purchaser also authorizes Seller to take any and all actions required by law, equity, statute or otherwise to perfect and protect the security interest granted hereunder.

8. **Termination of Security Interest.** Upon the payment in full of any and all amounts payable in connection with or due under this Note & Security Agreement, the security interest granted to Seller in the Collateral shall terminate. Upon any such termination, Seller shall execute and deliver to the Purchaser such documents as the Purchaser will reasonably request to evidence such termination.

9. **Title to Collateral.** The Purchaser shall not affirmatively grant a security interest in or lien on the Collateral that is senior to or *pari passu* with the interests in Collateral provided by this Note & Security Agreement. The Purchaser will take all commercially reasonable efforts to defend the Collateral against all material claims or demands of all Persons (other than the Seller) claiming the Collateral or any interest therein.

10. **Name and Jurisdiction of Organization.** The Purchaser represents and warrants that the Purchaser's legal name is as set forth in the opening paragraph hereof, and that the Purchaser is organized and in good standing in the State of [•]. The Purchaser will not change



its name or jurisdiction of organization unless the Seller has been given at least ten (10) Business Days prior written notice thereof.

11. **Further Assurances; Attorney-in-Fact.**

11.1 **Further Assurances.** The Purchaser agrees that, from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Seller may reasonably request, in order to perfect and protect the security interest granted or purported to be granted hereby or to enable the Seller to exercise and enforce its rights and remedies hereunder with respect to any Collateral (but any failure to request or assure that the Purchaser execute and deliver such instrument or documents or to take such action will not affect or impair the validity, sufficiency or enforceability of this Note & Security Agreement and the security interest, regardless of whether any such item was or was not executed and delivered or action taken in a similar context or on a prior occasion).

11.2 **Identification of Collateral.** Upon Seller's reasonable request, the Purchaser will furnish to the Seller, from time to time, statements and schedules, if any, that Purchaser has prepared in the ordinary course of its business that further identify and describe the Collateral.

11.3 **Attorney-in-Fact.** In furtherance, and not in limitation, of the other rights, powers and remedies granted to the Seller in this Agreement, upon the occurrence and during the continuation of an Event of Default, the Purchaser hereby appoints the Seller the Purchaser's attorney-in-fact, with full authority in the place and stead of Purchaser and in the name of Purchaser or otherwise, from time to time in the Seller's good faith discretion, to take any action (including the right to collect on any Collateral) and to execute any instrument that the Seller may reasonably believe is necessary or advisable to accomplish the purposes of this Note & Security Agreement, in a manner consistent with the terms hereof.

12. **Taxes and Claims.** The Purchaser will promptly pay all material taxes and other material charges levied or assessed by any Governmental Authority upon or against any Collateral or upon or against the creation, perfection or continuance of the security interest, except to the extent such taxes, charges or claims are being contested by the Purchaser in good faith by appropriate proceedings.

13. **Books and Records.** The Purchaser will keep and maintain, at its own cost and expense, records of the Collateral in the ordinary course of its business consistent with past practice.

14. **Inspection, Reports, Verifications.** Upon the occurrence and during the continuation of an Event of Default, the Purchaser will at all reasonable times permit the Seller or its representatives to examine or inspect any Collateral, any evidence of Collateral and the Purchaser's books and records concerning the Collateral, wherever located.

15. **Notice of Loss.** The Purchaser will promptly notify the Seller of any material loss of or material damage to any item of Collateral with a fair market value in excess of \$50,000.

16. **Insurance.** The Purchaser will insure the Collateral in the ordinary course of its business consistent with past practice.

17. **Events of Default.** If any of the following events (“Events of Default”) occurs:

(a) Purchaser shall fail to pay any principal amount or interest due under this Note & Security Agreement when the same becomes due and payable and has failed to cure such failure within ten (10) Business Days of written notice of such failure by Seller to Purchaser;

(b) Purchaser shall fail to observe or perform, in any material respect, any covenant of Purchaser set forth in this Note & Security Agreement and fails to diligently commence, within ten (10) Business Day of written notice of such failure by Seller to Purchaser, to cure the same;

(c) Purchaser shall suffer a casualty of \$500,000 or more to any item of any uninsured Collateral;

(d) Purchaser shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or application or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement, consolidation, compromise or readjustment of its debts or seeking a stay which has the effect of staying any creditor or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of an interim receiver, a receiver, a receiver and manager, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due;

(e) An involuntary petition shall be filed or application made or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation, compromise, or readjustment of the debts of the Purchaser or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing and such petition or proceeding shall not be dismissed within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

(f) An interim receiver, administrator, administrative receiver, receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for Purchaser or for all or any part of his property shall be appointed or a warrant of attachment, execution or

similar process shall be issued in any jurisdiction against any part of the property of Purchaser; or

(g) An Event of Default (as defined in the 503(b)(9) Note) has occurred.

then and, in any such event, Seller may proceed to protect and enforce its rights in the manner set forth in Section 16 hereof.

18. **Remedies.** If an Event of Default has occurred, (a) at the option of Seller by written notice to Purchaser, in the case of an Event of Default (other than an Event of Default under Section 16(d), (e) or (f)), and immediately and automatically, without notice or declaration of any kind, in the case of an Event of Default under Section 16(d), (e) or (f), any and all amounts outstanding hereunder shall at once become due and payable in full and in the manner set forth in Sections 2 and 4 hereof and (b) Seller may proceed to protect and enforce all rights, remedies and recourse as shall be available to Seller by law, equity, statute or otherwise by a suit or other appropriate proceeding, whether, without limitation, for the specific performance of any covenant or agreement contained in this Note & Security Agreement, or for an injunction against a violation of any of the terms hereof or in aid of the exercise of any right, power or remedy granted hereby or by law, equity, statute or otherwise. No course of dealing and no delay on the part of Seller in exercising any right, power or remedy will operate as a waiver thereof or otherwise prejudice Seller's rights, powers or remedies. No right, power or remedy conferred hereby is exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, by statute or otherwise. The Purchaser hereby waives protest, presentment, demand for payment, notice of dishonor and notice of acceleration of maturity and agrees to continue to remain bound for the payment of principal, interest and all other sums due under this Note & Security Agreement, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note & Security Agreement or by way of any extension or extensions of time for the payment of principal and interest. The Purchaser shall pay all costs of collection when incurred, including, without limitation, reasonable attorneys' fees, costs and other expenses. The Seller may, as applicable, exercise and enforce any and all rights and remedies available upon default to a secured party under Division 9 of the Uniform Commercial Code as adopted in the State of California, or as allowed to the trustee or beneficial holder (as applicable) of a deed of trust pursuant to California law.

19. **Costs and Expenses.** If an Event of Default has occurred, the Purchaser will reimburse the Seller on demand for all reasonable out-of-pocket expenses (including all reasonable fees and expenses of counsel and of any experts and agents) incurred by the Seller in connection with the foreclosure or enforcement of Seller's security interest and the enforcement of this Note & Security Agreement, and all such costs and expenses will be part of the obligations secured by the security interest granted in this Note & Security Agreement.

20. **The Seller's Duties as the Secured Party.** The powers conferred on the Seller hereunder are solely to protect its interest in the Collateral and will not impose any duty upon it to exercise any such powers. The Seller will be deemed to have exercised reasonable care in the safekeeping of any Collateral in its possession if such Collateral is accorded treatment



substantially equal to the safekeeping which the Seller accords its own property of like kind. Except for the safekeeping of any Collateral in its possession and the accounting for monies and for other properties actually received by it hereunder, the Seller will not have any duty, as to any Collateral, as to the taking of any necessary steps to preserve rights against any persons or any other rights pertaining to any Collateral. The Seller does not have any fiduciary relationship to the Purchaser, the relationship being solely that of creditor and debtor.

21. **Amendments; Waiver of Breaches.** This Note & Security Agreement may not be amended or otherwise modified or terminated (prior to payment in full in cash of all amounts owed by the Purchaser hereunder), except by a writing duly executed by the Purchaser and Seller. A waiver so signed will be effective only in the specific instance and for the specific purpose given. No waiver by Seller of any breach by the Purchaser of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision of this Note & Security Agreement. Mere delay or failure to act will not preclude the exercise or enforcement of any rights and remedies available to the Seller. All rights and remedies of the Seller will be cumulative and may be exercised singly in any order or sequence, or concurrently, at the Seller's option, and the exercise or enforcement of any such right or remedy will neither be a condition to nor bar the exercise or enforcement of any other right or remedy.

22. **Notices.** Any notice or other communication to any party in connection with this Note & Security Agreement will be in writing and will be sent by manual delivery, facsimile transmission, overnight courier or United States mail (postage prepaid) addressed to such party at the address specified on the signature page hereof, or at such other address as such party will have specified to the other party hereto in writing. All periods of notice will be measured from the date of delivery thereof if manually delivered, from the date of sending thereof with confirmed receipt if sent by facsimile transmission, from the first business day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed.

23. **Successors and Assigns.** The provisions of this Note & Security Agreement shall inure to the benefit of the Seller and any successor thereto by assignment or operation of law, and shall extend to any holder hereof, and shall be binding on any successor to the Purchaser. Notwithstanding the foregoing, the Purchaser's obligations under this Note & Security Agreement are not assignable. This Note & Security Agreement will (a) create a continuing security interest in the Collateral and will remain in full force and effect until payment in full of the obligations due hereunder, (b) be binding upon the Purchaser, its successors and assigns, and (c) inure to the benefit of, and be enforceable by, the Seller and its successors, transferees, and assigns.

24. **Headings.** Section headings used in this Note & Security Agreement are solely for convenience of reference and shall not affect the construction of this Note & Security Agreement.

25. **Severability.** Each provision of this Note & Security Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason, such illegality or invalidity shall not affect the balance of the

terms and provisions hereof, which shall remain binding and enforceable, and the rights and obligations of the parties hereto hereunder shall be construed and enforced only to such extent as shall be permitted by applicable law.

26. **Governing Law; Dispute Resolution.** This Note & Security Agreement shall be governed by and construed in accordance with, and the rights of the Purchaser and Seller with respect hereto shall be determined under, the laws of the State of California. Any action or proceeding relating in any way to this Note & Security Agreement shall be brought in the Bankruptcy case of In re Zacky Farms, LLC, E.D. Cal. Case No. 12-37961-B-11 (the "Bankruptcy Case"). If the action or proceeding is commenced after the Bankruptcy Case is closed then such matter shall be brought and enforced in any court of competent jurisdiction in Sacramento, California. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, any objection that such party may now or hereafter have to the laying of venue of any such action or proceeding in the courts of the State of California or the United States District Court for the Central District of California, in each case, sitting in Los Angeles, California, and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

27. **Counterparts.** This Note & Security Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument.

28. **No Fraudulent Conveyance.** It is the intention of the Purchaser and the Seller that this Note & Security Agreement not constitute a fraudulent transfer or fraudulent conveyance under any state or federal law that may be applied hereto.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Note & Security Agreement and delivered the same as of the date first written above.

PURCHASER:

[PURCHASER]

By: \_\_\_\_\_

Name:

Title:

**Notice Address:**

SELLER:

Zacky Farms, LLC, debtor in possession,

By: \_\_\_\_\_

Name:

Title:

**Notice Address:**



**SCHEDULE A**

<b>Facility Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>
Grower Ranch (18 <sup>th</sup> ) APN 026-060-007 (78.79 acres)	17432 18 <sup>th</sup> Avenue	Lemoore	CA	93245
Grower Ranch (Kent) APN 024-170-073 (77.19 acres)	19774 Kent Avenue	Lemoore	CA	93245
Grower Ranch (Holm) APN 024-170-020 (40 acres)	16395 & 16485 19 <sup>th</sup> Avenue	Lemoore	CA	93245
Grower Ranch (6 <sup>th</sup> Brood, Red and Gray) APNs 046-270-004 & 035 (400 acres)	43501 6 <sup>th</sup> Avenue	Corcoran	CA	93212
Grower Ranch (Brawley) APN 053-090-37 (80 acres)	19010 & 19012 S. Brawley Avenue	Riverdale	CA	93609
Grower Ranch (Experimental) APN 043-050-15 (20 acres)	590 W. Kamm Avenue	Fresno	CA	93725
Grower Ranch (G & H) APN 035-060-90 (80 acres)	8351 McMullin Grade	Fresno	CA	93725
Turkey Hatchery APN 023-060-44S (3.99 acres)	1486 S. Industrial Way	Kerman	CA	93630

**EXHIBIT C**

**FORM OF 503(b)(9) NOTE & SECURITY AGREEMENT**

\$6,400,000

Los Angeles, California  
[•], 2013

FOR VALUE RECEIVED, [•], a [•] (the “Purchaser”), hereby unconditionally promises to pay, in the manner set forth below, for the benefit of holders of finally allowed claims arising under Section 503(b)(9) of the Bankruptcy Code against ZACKY FARMS, LLC (the “Seller”), the principal sum of SIX MILLION FOUR HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$6,400,000.00) (as such amount may be reduced from time to time pursuant to Section 3 hereof, the “Principal Sum”), plus interest on the Principal Sum as set forth in Section 1 hereof, it being understood that the Principal Sum is subject to reduction at the Maturity Date (as defined below) pursuant to Section 2 hereof. All capitalized terms which are used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of February 6, 2013, by and between The Robert D. Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988 and Seller (the “Asset Purchase Agreement”).

1. **Interest.** Interest on the unpaid principal amount of this Note & Security Agreement outstanding from time to time shall accrue from the date hereof to and including the date on which the outstanding principal and accrued and unpaid interest is paid in full, at the interest rate of four percent (4%) per annum, payable quarterly in arrears on (a) the date that is ninety (90) days from the date hereof and (b) the date that is one hundred eighty (180) days from the date hereof, and if either such date shall be a day other than a Business Day, then such interest shall be payable on the next Business Day after such date. All interest hereunder shall be calculated on the basis of a 360-day year and paid for the actual number of days elapsed.

2. **Repayment of Principal.** On the date that is one hundred eighty (180) days from the date hereof or, if such date shall be a day other than a Business Day, then the next Business Day (the “Maturity Date”), the Principal Sum shall be automatically reduced by an amount equal to fifty percent (50%) of the amount by which \$6,400,000 exceeds the finally allowed amount of claims against Seller arising under Section 503(b)(9) of the Bankruptcy Code as of the Maturity Date, but in no event shall the Principal Sum be reduced below \$0. On the Maturity Date, the Principal Sum (after the application of the foregoing sentence) shall become due and payable.

3. **Prepayment.** The Purchaser at any time or from time to time may prepay, in cash, the unpaid principal amount of or interest on this Note & Security Agreement, in whole or in part, without penalty or premium. If Purchaser shall sell any Collateral (as defined below) with net proceeds of no less than \$50,000 other than in the ordinary course of business, the proceeds of such sale shall be applied to the prepayment of this Note & Security Agreement, to the extent there are any amounts outstanding hereunder. Any net amount of insurance proceeds received on account of the Collateral remaining after the cost of replacement of such Collateral

shall be applied to the prepayment of this Note & Security Agreement, to the extent there any amounts outstanding hereunder.

4. **Manner of Making Payments.** Payment of any amounts hereunder (whether principal or interest) shall be made to the 503(b)(9) Account in United States dollars by wire transfer of immediately available funds not later than 2:00 p.m., Los Angeles, California time, on the date such payment is due, or an optional prepayment is made.

5. **Application of Payments.** All payments made hereunder shall be applied first to accrued and unpaid interest and then to the unpaid principal amount hereof (which shall reduce the then current Principal Sum).

6. **Pledge of Collateral.** As collateral security for the prompt and complete payment of the Purchaser's obligation under this Note & Security Agreement (whether at the stated maturity, by acceleration, or otherwise), the Purchaser hereby grants to Seller a continuing security interest in (i) other than real property, all property rights and rights of Purchaser in all its assets, now owned or hereafter at any time acquired by the Purchaser, including, without limitation, all accounts, accounts receivable, money, deposit accounts, goods, inventory, chattel paper, documents, instruments, insurance proceeds, investment property, letter-of-credit rights, payment intangibles, general intangibles, commodity contracts, commodity accounts, farm products and livestock (the "Non-Real Estate Collateral") and (ii) the collateral set forth on Schedule A hereto (the "Real Estate Collateral") and any other tangible or intangible property received upon the sale or other disposition of all or any of the foregoing (collectively, the Non-Real Estate Collateral and the Real Estate Collateral, the "Collateral"). The Purchaser hereby irrevocably authorizes Seller, at any time and from time to time, to file in any appropriate filing office, wherever located, any financing statement describing the Collateral that contains any information required by the Uniform Commercial Code of the applicable jurisdiction for the sufficiency or filing office acceptance of any financing statement. The Purchaser also authorizes Seller to take any and all actions required by law, equity, statute or otherwise to perfect and protect the security interest granted hereunder.

7. **Termination of Security Interest.** Upon the payment in full of any and all amounts outstanding in connection with or due under this Note & Security Agreement, the security interest granted to Seller in the Collateral shall terminate. Upon any such termination, Seller shall execute and deliver to the Purchaser such documents as the Purchaser will reasonably request to evidence such termination.

8. **Title to Collateral.** The Purchaser shall not affirmatively grant a security interest in or lien on the Collateral that is senior to or *pari passu* with the interests in Collateral provided by this Note & Security Agreement. The Purchaser will take all commercially reasonable efforts to defend the Collateral against all material claims or demands of all Persons (other than the Seller) claiming the Collateral or any interest therein.

9. **Name and Jurisdiction of Organization.** The Purchaser represents and warrants that the Purchaser's legal name is as set forth in the opening paragraph hereof, and that the



Purchaser is organized and in good standing in the State of [•]. The Purchaser will not change its name or jurisdiction of organization unless the Seller has been given at least ten (10) Business Days prior written notice thereof.

10. **Further Assurances; Attorney-in-Fact.**

10.1 **Further Assurances.** The Purchaser agrees that, from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Seller may reasonably request, in order to perfect and protect the security interest granted or purported to be granted hereby or to enable the Seller to exercise and enforce its rights and remedies hereunder with respect to any Collateral (but any failure to request or assure that the Purchaser execute and deliver such instrument or documents or to take such action will not affect or impair the validity, sufficiency or enforceability of this Note & Security Agreement and the security interest, regardless of whether any such item was or was not executed and delivered or action taken in a similar context or on a prior occasion).

10.2 **Identification of Collateral.** Upon Seller's reasonable request, the Purchaser will furnish to the Seller, from time to time, statements and schedules, if any, that Purchaser has prepared in the ordinary course of its business that further identify and describe the Collateral.

10.3 **Attorney-in-Fact.** In furtherance, and not in limitation, of the other rights, powers and remedies granted to the Seller in this Agreement, upon the occurrence and during the continuation of an Event of Default, the Purchaser hereby appoints the Seller the Purchaser's attorney-in-fact, with full authority in the place and stead of Purchaser and in the name of Purchaser or otherwise, from time to time in the Seller's good faith discretion, to take any action (including the right to collect on any Collateral) and to execute any instrument that the Seller may reasonably believe is necessary or advisable to accomplish the purposes of this Note & Security Agreement, in a manner consistent with the terms hereof.

11. **Taxes and Claims.** The Purchaser will promptly pay all material taxes and other material charges levied or assessed by any Governmental Authority upon or against any Collateral or upon or against the creation, perfection or continuance of the security interest, except to the extent such taxes, charges or claims are being contested by the Purchaser in good faith by appropriate proceedings. The Purchaser will pay any and all amounts due to suppliers of feed to the Purchaser such that neither of the following events occur: (i) suppliers of feed cease delivering feed to the Purchaser for five or more consecutive days on the basis of non-payment or (ii) suppliers of feed exercise remedies with respect to any statutory liens on the Collateral resulting in a material interruption in the Business that continues for five or more consecutive days.

12. **Books and Records.** The Purchaser will keep and maintain, at its own cost and expense, records of the Collateral in the ordinary course of its business consistent with past practice.

13. **Inspection, Reports, Verifications.** Upon the occurrence and during the continuation of an Event of Default, the Purchaser will at all reasonable times permit the Seller or its representatives to examine or inspect any Collateral, any evidence of Collateral and the Purchaser's books and records concerning the Collateral, wherever located.

14. **Notice of Loss.** The Purchaser will promptly notify the Seller of any material loss of or material damage to any item of Collateral with a fair market value in excess of \$50,000.

15. **Insurance.** The Purchaser will insure the Collateral in the ordinary course of its business consistent with past practice.

16. **Events of Default.** If any of the following events ("Events of Default") occurs:

(a) Purchaser shall fail to pay any principal amount or interest due under this Note & Security Agreement when the same becomes due and payable and has failed to cure such failure within ten (10) Business Days of written notice of such failure by Seller to Purchaser;

(b) Purchaser shall fail to observe or perform, in any material respect, any covenant of Purchaser set forth in this Note & Security Agreement and fails to diligently commence, within ten (10) Business Day of written notice of such failure by Seller to Purchaser, to cure the same;

(c) Purchaser shall suffer a casualty of \$500,000 or more to any item of any uninsured Collateral, excluding live poultry;

(d) Purchaser shall (i) file a voluntary petition in bankruptcy or file a voluntary petition or application or an answer or otherwise commence any action or proceeding seeking reorganization, arrangement, consolidation, compromise or readjustment of its debts or seeking a stay which has the effect of staying any creditor or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing, or consent to, approve of, or acquiesce in, any such petition, action or proceeding; (ii) apply for or acquiesce in the appointment of an interim receiver, a receiver, a receiver and manager, assignee, liquidator, sequestrator, custodian, monitor, administrator, trustee or similar officer for it or for all or any part of its property; (iii) make an assignment for the benefit of creditors; or (iv) be unable generally to pay its debts as they become due;

(e) An involuntary petition shall be filed or application made or an action or proceeding otherwise commenced seeking reorganization, arrangement, consolidation, compromise, or readjustment of the debts of the Purchaser or for any other relief under the Bankruptcy Code, or under any other bankruptcy, insolvency, liquidation, winding up, corporate or similar, equivalent, or applicable act or law, state, federal, provincial or foreign, in any jurisdiction, now or hereafter existing and such petition or proceeding shall not be dismissed

within sixty (60) days after the filing or commencement thereof or an order of relief shall be entered with respect thereto;

(f) An interim receiver, administrator, administrative receiver, receiver, assignee, liquidator, sequestrator, custodian, monitor, trustee or similar officer for Purchaser or for all or any part of his property shall be appointed or a warrant of attachment, execution or similar process shall be issued in any jurisdiction against any part of the property of Purchaser; or

(g) An Event of Default (as defined in the Creditor Recovery Note) has occurred.

then and, in any such event, Seller may proceed to protect and enforce its rights in the manner set forth in Section 17 hereof.

17. **Remedies.** If an Event of Default has occurred, (a) at the option of Seller by written notice to Purchaser, in the case of an Event of Default (other than an Event of Default under Section 16(d), (e) or (f)), and immediately and automatically, without notice or declaration of any kind, in the case of an Event of Default under Section 16(d), (e) or (f), any and all amounts outstanding hereunder shall at once become due and payable in full and in the manner set forth in Sections 2 and 4 hereof (with the "Maturity Date" being such date the amounts outstanding hereunder shall become due and payable in full) and (b) Seller may proceed to protect and enforce all rights, remedies and recourse as shall be available to Seller by law, equity, statute or otherwise by a suit or other appropriate proceeding, whether, without limitation, for the specific performance of any covenant or agreement contained in this Note & Security Agreement, or for an injunction against a violation of any of the terms hereof or in aid of the exercise of any right, power or remedy granted hereby or by law, equity, statute or otherwise. No course of dealing and no delay on the part of Seller in exercising any right, power or remedy will operate as a waiver thereof or otherwise prejudice Seller's rights, powers or remedies. No right, power or remedy conferred hereby is exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, by statute or otherwise. The Purchaser hereby waives protest, presentment, demand for payment, notice of dishonor and notice of acceleration of maturity and agrees to continue to remain bound for the payment of principal, interest and all other sums due under this Note & Security Agreement, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note & Security Agreement or by way of any extension or extensions of time for the payment of principal and interest. The Purchaser shall pay all costs of collection when incurred, including, without limitation, reasonable attorneys' fees, costs and other expenses. The Seller may, as applicable, exercise and enforce any and all rights and remedies available upon default to a secured party under Division 9 of the Uniform Commercial Code as adopted in the State of California, or as allowed to the trustee or beneficial holder (as applicable) of a deed of trust pursuant to California law.

18. **Costs and Expenses.** If an Event of Default has occurred, the Purchaser will reimburse the Seller on demand for all reasonable out-of-pocket expenses (including all



reasonable fees and expenses of counsel and of any experts and agents) incurred by the Seller in connection with the foreclosure or enforcement of Seller's security interest and the enforcement of this Note & Security Agreement, and all such costs and expenses will be part of the obligations secured by the security interest granted in this Note & Security Agreement.

19. **The Seller's Duties as the Secured Party.** The powers conferred on the Seller hereunder are solely to protect its interest in the Collateral and will not impose any duty upon it to exercise any such powers. The Seller will be deemed to have exercised reasonable care in the safekeeping of any Collateral in its possession if such Collateral is accorded treatment substantially equal to the safekeeping which the Seller accords its own property of like kind. Except for the safekeeping of any Collateral in its possession and the accounting for monies and for other properties actually received by it hereunder, the Seller will not have any duty, as to any Collateral, as to the taking of any necessary steps to preserve rights against any persons or any other rights pertaining to any Collateral. The Seller does not have any fiduciary relationship to the Purchaser, the relationship being solely that of creditor and debtor.

20. **Amendments; Waiver of Breaches.** This Note & Security Agreement may not be amended or otherwise modified or terminated (prior to payment in full in cash of all amounts owed by the Purchaser hereunder), except by a writing duly executed by the Purchaser and Seller. A waiver so signed will be effective only in the specific instance and for the specific purpose given. No waiver by Seller of any breach by the Purchaser of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision of this Note & Security Agreement. Mere delay or failure to act will not preclude the exercise or enforcement of any rights and remedies available to the Seller. All rights and remedies of the Seller will be cumulative and may be exercised singly in any order or sequence, or concurrently, at the Seller's option, and the exercise or enforcement of any such right or remedy will neither be a condition to nor bar the exercise or enforcement of any other right or remedy.

21. **Notices.** Any notice or other communication to any party in connection with this Note & Security Agreement will be in writing and will be sent by manual delivery, facsimile transmission, overnight courier or United States mail (postage prepaid) addressed to such party at the address specified on the signature page hereof, or at such other address as such party will have specified to the other party hereto in writing. All periods of notice will be measured from the date of delivery thereof if manually delivered, from the date of sending thereof with confirmed receipt if sent by facsimile transmission, from the first business day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed.

22. **Successors and Assigns.** The provisions of this Note & Security Agreement shall inure to the benefit of the Seller and any successor thereto by assignment or operation of law, and shall extend to any holder hereof, and shall be binding on any successor to the Purchaser. Notwithstanding the foregoing, the Purchaser's obligations under this Note & Security Agreement are not assignable. This Note & Security Agreement will (a) create a continuing security interest in the Collateral and will remain in full force and effect until payment in full of the obligations due hereunder, (b) be binding upon the Purchaser, its

successors and assigns, and (c) inure to the benefit of, and be enforceable by, the Seller and its successors, transferees, and assigns.

23. **Headings.** Section headings used in this Note & Security Agreement are solely for convenience of reference and shall not affect the construction of this Note & Security Agreement.

24. **Severability.** Each provision of this Note & Security Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which shall remain binding and enforceable, and the rights and obligations of the parties hereto hereunder shall be construed and enforced only to such extent as shall be permitted by applicable law.

25. **Governing Law; Dispute Resolution.** This Note & Security Agreement shall be governed by and construed in accordance with, and the rights of the Purchaser and Seller with respect hereto shall be determined under, the laws of the State of California. Any action or proceeding relating in any way to this Note & Security Agreement shall be brought in the Bankruptcy case of In re Zacky Farms, LLC, E.D. Cal. Case No. 12-37961-B-11 (the "Bankruptcy Case"). If the action or proceeding is commenced after the Bankruptcy Case is closed then such matter shall be brought and enforced in any court of competent jurisdiction in Sacramento, California. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, any objection that such party may now or hereafter have to the laying of venue of any such action or proceeding in the courts of the State of California or the United States District Court for the Central District of California, in each case, sitting in Los Angeles, California, and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

26. **Counterparts.** This Note & Security Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument.

27. **No Fraudulent Conveyance.** It is the intention of the Purchaser and the Seller that this Note & Security Agreement not constitute a fraudulent transfer or fraudulent conveyance under any state or federal law that may be applied hereto.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Note & Security Agreement and delivered the same as of the date first written above.

**PURCHASER:**

[PURCHASER]

By: \_\_\_\_\_  
Name:  
Title:

**Notice Address:**

**SELLER:**

Zacky Farms, LLC, debtor in possession,

By: \_\_\_\_\_  
Name:  
Title:

**Notice Address:**



**SCHEDULE A**

The real property assets set forth below:

<b>Facility Name</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>
Stockton Plant APN 163-260-07 (15.17 acres)	1111 Navy Drive	Stockton	CA	95206
Warehouse APN 458-240-09	By Fresno Mill	Fresno	CA	
Vacant Land 57 APN 028-030-032	Approximately 58.30 acres open land located in Hanford, CA	Hanford	CA	
Turkey Processing Plant APN 480-040-06S (4.98 acres)	2222 & 2240 S. East Avenue	Fresno	CA	93721
Empire Facility APN 480-040-11 (11.53 acres)	2950 E. California Street	Fresno	CA	93721
Litter Yard APN 055-310-29 (22.56 acres)	18804 S. Camden Avenue	Laton	CA	93242
Garage APN 458-250-02 (2.18 acres)	190 N. Thorne Avenue	Fresno	CA	93706
Mill Annex APN 458-240-09 (.48 acres)	245, 249, 251 North H Street	Fresno	CA	93701
Corporate Offices APN 468-040-07S (9.57 acres)	1888 & 2020 S. East Avenue	Fresno	CA	93721
Warehouse APN 480-040-07 (2.97 acres)	2272 S. East Avenue	Fresno	CA	93721

# EXHIBIT 4

**FOX ROTHSCHILD LLP**

Michael A. Sweet, Esq. (Bar No. 184345)  
Dale L. Bratton, Esq. (Bar No. 124328)  
Avi E. Muhtar, Esq. (Bar No. 260728)  
235 Pine Street, Suite 1500  
San Francisco, CA 94104  
Telephone: (415) 364-5548  
Facsimile: (415) 391-4436  
msweet@foxrothschild.com  
dbratton@foxrothschild.com  
amuhtar@foxrothschild.com

-and-

**LOWENSTEIN SANDLER LLP**

Jeffrey D. Prol, Esq. (admitted *pro hac vice*)  
Wojciech F. Jung, Esq. (admitted *pro hac vice*)  
65 Livingston Avenue  
Roseland, NJ 07068  
Telephone: (973) 597-2500  
Facsimile: (973) 597-2400  
jprol@lowenstein.com  
wjung@lowenstein.com

Bruce S. Nathan, Esq. (admitted *pro hac vice*)  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 262-6700  
Facsimile: (973) 422-6851  
bnathan@lowenstein.com

*Co-Counsel to the Official Committee of Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

In re

ZACKY FARMS, LLC, a California  
limited liability company,  
  
Debtor-In-Possession.

Case No. 12-37961- B-11

Chapter 11

DCN: FWP-25

Hearing Date: February 20, 2013  
Time: 2:00 p.m.  
Courtroom: 32  
501 I Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814

**ORDER GRANTING JOINT MOTION FOR APPROVAL OF SETTLEMENT  
AMONG THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,  
THE DEBTOR AND THE ROBERT AND LILLIAN ZACKY TRUST PURSUANT TO  
BANKRUPTCY RULE 9019**

RECEIVED

February 20, 2013  
CLERK, U. S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0004670408

Y01-20253894.1

ORDER GRANTING JOINT MOTION  
FOR APPROVAL OF SETTLEMENT



1 The Joint Motion For Approval Of Settlement Among The Official Committee Of  
2 Unsecured Creditors, The Debtor And The Robert And Lillian Zacky Trust Pursuant To  
3 Bankruptcy Rule 9019 (the "Settlement Motion") brought by the Official Committee of Unsecured  
4 Creditors (the "Committee") and Zacky Farms, LLC (the "Debtor"), came on for hearing before  
5 this Court on February 20, 2013, at 2:00 p.m. Appearances of counsel for the Committee, the  
6 Debtor, the Robert and Lillian Trust (as defined below) and other parties in interest, and all  
7 responses and objections (if any) to the Motion, were as stated on the record of the hearing. The  
8 Court having considered the Motion, the pleadings filed in support of the Motion and any  
9 pleadings (if any) in opposition, and the arguments of counsel, and good cause appearing therefor;

10 THE COURT HEREBY FINDS:

11 A. The findings and conclusions set forth in this Order constitute the Court's findings of fact  
12 and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable by Bankruptcy  
13 Rule 9014.

14 B. To the extent that any of the following findings of fact constitute conclusions of law, they  
15 are adopted as such. To the extent that any of the following conclusions of law constitute  
16 findings of fact, they are adopted as such.

17 C. The Court has jurisdiction over the Settlement Motion pursuant to 28 U.S.C. §§ 1334 and  
18 157. The Settlement Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).  
19 Venue of this chapter 11 case, and the Settlement Motion, is proper in this district pursuant  
20 to 28 U.S.C. §§ 1408 and 1409.

21 D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C.  
22 § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the  
23 Federal Rules of Civil Procedure, made applicable by Bankruptcy Rule 7054, the Court  
24 expressly finds that there is no just reason for delay in the implementation of this Order,  
25 and expressly directs entry of judgment as set forth in this Order.

26 E. The basis for the relief requested in the Settlement Motion is Bankruptcy Rule 9019.

27 F. Notice of the Settlement Motion appropriate and sufficient under applicable law and rules,  
28

1 and this Court's oral order shortening time made at the hearing held in this case on January  
2 18, 2013, has been given.

3 G. On October 8, 2012, the Debtor filed a voluntary petition for relief under chapter 11 of the  
4 Bankruptcy Code (the "Petition Date").

5 H. Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate  
6 its business as debtor in possession.

7 I. On October 16, 2012, the Office of the United States Trustee appointed the Committee  
8 pursuant to § 1102(a)(1) of the Bankruptcy Code.

9 J. No trustee or examiner has been appointed in the Debtor's bankruptcy case.

10 K. On October 10, 2012, the Debtor filed its *Motion For Interim Order (I) Authorizing Debtor*  
11 *(A) To Obtain Post-Petition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(c)(1),*  
12 *364(c)(2), 364(c)(3), 364(d)(1), 364(d) And 507 And (B) To Utilize Cash Collateral*  
13 *Pursuant To 11 U.S.C. § 363, (II) Granting Adequate Protection To Prepetition Secured*  
14 *Lender Pursuant To 11 U.S.C. §§ 361, 362, 363, 364, And 507, (III) Modifying The*  
15 *Automatic Stay And (IV) Scheduling Final Hearing* (the "DIP Motion") [Docket No. 32,  
16 FWP-1].

17 L. On November 13, 2012, the Court approved the request set forth in the DIP Motion, as  
18 modified, by entry of the final financing order (the "Final DIP Order") [Docket No. 292].  
19 Under the Final DIP Order, Lillian Zacky, as Trustee of the Robert D. Zacky and Lillian D.  
20 Zacky Trust U/D/T July 26, 1988 (the "Robert and Lillian Trust" or the "Purchaser" and  
21 collectively with the Committee and the Trust, the "Settling Parties") became the DIP  
22 Lender to the Debtor.

23 M. The Committee timely filed a notice of appeal of the Final DIP Order, which appeal is  
24 currently pending before the Bankruptcy Appellate Panel of the Ninth Circuit as BAP No.  
25 EC-12-1617 (the "DIP Appeal").

26 N. The DIP Motion and the Final DIP Order established a deadline for the Committee to  
27 investigate the claims of, and potential claims against, Wells Fargo and the Robert and  
28

1 Lillian Trust.

2 O. Subsequent to its appointment, the Committee, through its professionals, and in  
3 furtherance of its responsibilities under the Final DIP Order to investigate claims against  
4 the Robert and Lillian Trust, conducted discovery to analyze the validity of certain liens  
5 formerly held by Wells Fargo as they relate to the Original Credit Facility and now  
6 controlled by the Robert and Lillian Trust, as well as certain actions undertaken by the  
7 Debtor's insiders. In connection with such discovery, the Committee filed applications  
8 seeking orders requiring the Debtor and certain third parties to appear for oral examination  
9 and to produce documents under Bankruptcy Rule 2004 [Docket Nos. 269 [LOW-1] &  
10 327 [FRX-4]]. The Court granted the applications [Docket Nos. 290 & 330] (the "2004  
11 Exam Orders").

12 P. Pursuant to the 2004 Exam Orders, the Debtor, the Robert and Lillian Trust (through  
13 Lillian Zacky), Bank of America (the Debtor's prior lender), and Wells Fargo were  
14 required to produce, and the Committee reviewed, a substantial volume of documents.  
15 Additionally, the Committee conducted oral examinations of Lillian Zacky and the  
16 Debtor's chief financial officer, Kirk VanderGeest, as well as Carlo Serafini of Wells  
17 Fargo.

18 Q. On November 7, 2012, the Debtor filed its *Motion to Approve Sale Procedures* [Docket  
19 No. 240, FWP-12] seeking approval of certain sale procedures for the sale of substantially  
20 all of the Debtor's assets (the "Procedures"). On November 20, 2012, the Court approved  
21 the Procedures [Docket No. 323]. Pursuant to the Procedures, bids were due by January  
22 10, 2013, an auction (the "Auction") was scheduled for January 15, 2013, and a sale  
23 hearing was scheduled for January 18, 2013. The Procedures also permitted the Robert  
24 and Lillian Trust to credit bid under the provisions of § 363(k) of the Bankruptcy Code.

25 R. On December 21, 2012, the Debtor filed its *Motion For Authority To Sell Substantially All*  
26 *of the Debtor's Assets Free And Clear Of All Liens, Claims, And Encumbrances Pursuant*  
27 *To Section 363 of the Bankruptcy Code* (the "Sale Motion") [Docket No. 468, FWP-22].  
28



1 Pursuant to the Sale Motion, the Debtor proposed to sell substantially all of its assets (the  
2 “Assets”) to a successful bidder identified at the Auction.

3 S. On January 11, 2013,<sup>1</sup> the Committee filed its *Response and Limited Objection to Debtor’s*  
4 *Motion for Authority to Sell Substantially All of the Debtor’s Assets Free and Clear of All*  
5 *Liens, Claims, and Encumbrances Pursuant to Section 363 of the Bankruptcy Code* (the  
6 “Committee Sale Objection”) [Docket No. 648]. The Committee expressed concern that  
7 the Robert and Lillian Trust would seek to credit bid its alleged prepetition secured claim  
8 for purchase of the Debtor’s assets, to the detriment of the Debtor’s administrative  
9 creditors and its general unsecured creditors represented by the Committee. The  
10 Committee objected to the ability of the Robert and Lillian Trust to credit bid at the  
11 Auction, asserting that the Committee had filed an objection to the Robert and Lillian  
12 Trust’s secured claim and that § 363(k) of the Bankruptcy Code precluded such a credit bid  
13 because the Robert and Lillian Trust did not have an *allowed* secured claim as required by  
14 § 363(k). The Committee requested that the Court, if nevertheless inclined to permit a  
15 credit bid from the Robert and Lillian Trust, impose certain conditions on any such credit  
16 bid to protect the Committee’s lien challenge rights and to preserve the benefit of those  
17 claims for creditors of the estate. The Debtor disputed the Committee’s contentions and  
18 specifically asserted that no objection had been filed, and even if an objection had been  
19 filed, under section 363(k) of the Bankruptcy Code, an order prior to the auction had to  
20 have been obtained to preclude the Robert and Lillian Trust from credit bidding.

21 T. The Committee further objected to the Sale Motion because the Debtor had not provided a  
22 mechanism for the payment of administrative claims (including allowed § 503(b)(9)  
23 claims) or for a proper wind-down of this bankruptcy case. Moreover, the Committee  
24 objected to the payment of the net proceeds of the proposed sale to the Robert and Lillian  
25 Trust at closing in light of the Committee’s challenge to the extent and validity of the

26  
27 <sup>1</sup> Through a stipulation between the Committee and the Debtor, the Committee’s objection deadline to the  
28 Sale Motion was extended to January 11, 2013 [Docket No. 552].

1 Robert and Lillian Trust's liens and claims.

2 U. At the Auction held on January 15, 2013, the Debtor selected the Robert and Lillian Trust  
3 as the high bidder for its assets and Pitman Family Farms ("Pitman") was selected as the  
4 next highest bidder.

5 V. The Committee's lien challenges against the Lillian Entities (as defined herein) (the "Lien  
6 Challenges") are set forth in the complaint (the "Complaint") that the Committee has  
7 sought standing to prosecute against various parties, including the Robert and Lillian Trust.  
8 In the Final DIP Order, the Debtor, *inter alia*, waived its right to prosecute certain claims.  
9 Paragraph 25 of the Final DIP Order provides that "[e]ach stipulation, acknowledgment  
10 and release contained in the Interim Orders or this Final Order, including, but not limited  
11 to, in Paragraphs 4, 5 and 13 of this Final Order, shall be binding upon the Debtor and any  
12 successor thereto (including any chapter 7 or chapter 11 trustee appointed or elected for the  
13 Debtor) under all circumstances." In paragraph 13 of the Final DIP Order, the Debtor  
14 released the Robert and Lillian Trust and each of its respective affiliates, agents,  
15 representatives, partners, financial advisors, legal advisors, managers, consultants,  
16 accountants and attorneys from all lender liability and avoidance claims of every kind, and  
17 any challenge to the priority, extent, and validity of the liens held by the Robert and Lillian  
18 Trust.

19 W. Pursuant to the Final DIP Order, however, the Committee retained the right to seek  
20 standing to file an adversary proceeding or contested matter challenging or objecting to the  
21 validity, perfection, enforceability, or priority of the Robert and Lillian Trust's security  
22 interests in and liens on prepetition collateral or amount and allowance of the indebtedness  
23 under the Original Credit Facility [Final DIP Order at ¶25].

24 X. On January 11, 2013, the Committee timely filed its *Motion for an Order Authorizing the*  
25 *Committee To Prosecute Certain Causes of Action on Behalf of the Debtor's Estate* (the  
26 "Standing Motion") [Docket No. 638, LWN-1] seeking standing and authority to file the  
27 Complaint to prosecute claims seeking to, *inter alia*, subordinate and recharacterize the  
28

1 indebtedness under the Original Credit Facility and certain other loans purportedly given  
2 by the Robert and Lillian Trust and its affiliates to the Debtor prior to the Petition Date,  
3 and to recover payments made to certain insiders while the Debtor was allegedly insolvent.  
4 The Complaint also seeks damages from certain insiders of the Debtor for breach of  
5 fiduciary duty and good faith. A status conference on the Standing Motion is scheduled  
6 for February 20, 2013.

7 Y. The Debtor, the Robert and Lillian Trust, and the Committee have engaged in ongoing  
8 settlement discussions regarding an overall resolution of the present case since the series of  
9 contested DIP Facility hearings. The Settling Parties have throughout the case engaged in  
10 substantial arm's length negotiations to provide for payment of administrative and priority  
11 claims and a return to general unsecured creditors. As a result of such negotiations, the  
12 Settling Parties entered into the settlement, the essential terms of which (i) were embodied  
13 in the Term Sheet that was attached to the Notice of Hearing on the Settlement Motion  
14 (served on all required parties on January 18, 2013), as amended in the proposed order and  
15 the Amendment of Sale Order that were attached as Exhibit 1 to the *Exhibit to Joint*  
16 *Motion for Approval of Settlement Among the Official Committee of Unsecured Creditors,*  
17 *the Debtor and the Robert and Lillian Zacky Trust Pursuant To Bankruptcy Rule 9019,*  
18 filed on February 7, 2013 [Docket No. 993], and (ii) are now set forth in the provisions of  
19 this Order (the "Settlement").

20 Z. At a January 18, 2013, hearing (the "January 18 Hearing"), the Debtor read into the record  
21 the terms of the proposed sale to the Robert and Lillian Trust and also the terms of the  
22 Settlement reached by and among the Debtor, the Committee and the Robert and Lillian  
23 Trust. At the January 18 Hearing, a backup bid by Pitman (increased by Pitman after the  
24 Auction) was also acknowledged as the backup bid (after consultation with the counsel to  
25 the Committee) under the provisions of the Procedures as modified on the record by the  
26 Court (the "Pitman Backup Bid"). The Court set a further hearing for January 28, 2013, to  
27 consider the Robert and Lillian Trust purchase of the Assets and the Settlement.  
28



1 AA. Subsequent to the January 18 Hearing, the Debtor, the Committee and the Robert  
2 and Lillian Trust engaged in negotiations regarding the final documentation of the  
3 proposed purchase and the Settlement. During the afternoon of January 23, 2013, the  
4 Debtor was informed that the Robert and Lillian Trust had decided it would not go forward  
5 with the purchase of the Assets and would not object to the Debtor proceeding with the  
6 Pitman Backup Bid.

7 BB. Consistent with the Procedures, the Debtor accepted the Pitman Backup Bid  
8 (subject to approval by this Court), and proceeded with negotiation and documentation of  
9 its implementation. In order to memorialize the terms of the Pitman Backup Bid, the  
10 Debtor entered into two Asset Purchase Agreements (Lots 1 and 2) with Pitman  
11 (collectively, the "Pitman Purchase Agreements"), each dated January 30, 2013, pursuant  
12 to which the Debtor agreed to sell the Assets to Pitman (subject to approval by this Court  
13 and subject to the Debtor's right to continue to solicit higher or better offers for its assets).  
14 The Pitman Purchase Agreements were attached as Exhibit 4 to the January 24 Status  
15 Report.

16 CC. A further hearing on the Sale Motion and the Settlement was set for February 6,  
17 2013 (the "February 6 Hearing"). It was contemplated that, at the February 6 Hearing, the  
18 Debtor would seek the Court's approval of the Sale Motion with the Pitman Purchase  
19 Agreements as the high bidder, and approval of the Settlement with cash proceeds from the  
20 Pitman transaction replacing the promissory note provisions of the Settlement.

21 DD. On February 5, 2013, the Robert and Lillian Trust informed the Debtor that  
22 the Robert and Lillian Trust intended to submit an overbid to the offer set forth in the  
23 Pitman Purchase Agreement. The Robert and Lillian Trust acted in reliance, in part, on a  
24 provision of the Pitman Purchase Agreements expressly providing for the Debtor's  
25 consideration of higher or better offers. The Debtor and the Committee accordingly  
26 considered an overbid by the Robert and Lillian Trust received on the evening of February  
27 5. Thereafter, the Debtor, the Committee and the Robert and Lillian Trust negotiated to the  
28

1 time of the February 6 Hearing on the terms of an overbid for the Assets.

2 EE. The negotiations on February 5 and 6 resulted in agreement between the Debtor  
3 and the Committee for acceptance of the Robert and Lillian Trust's overbid, the terms of  
4 which are embodied in the Settlement APA (as defined below), and related amendments to  
5 the Settlement. These amendments were as stated in the Amendment of Settlement Order  
6 and are now set forth herein.

7 FF. The Settlement is the result of arm's length bargaining, good faith negotiations, and the  
8 independent business judgment of each party. Each Settling Party has been advised by  
9 counsel of its own choosing, and understands the terms of the Settlement and their  
10 significance for such party.

11 GG. Each of the Settling Parties has the authority to enter into the Settlement, subject  
12 only to the approval of this Court as reflected in this Order.

13 Accordingly, based on the foregoing findings and conclusions,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 15 1. On the Effective Date of the Settlement (as hereinafter defined) and as set forth herein,  
16 the Committee and the Debtor waive all lien challenge rights and any and all claims  
17 (other than claims and obligations arising from this Order or the Settlement APA),  
18 including, without limitation, Bankruptcy Code chapter 5 causes of action and state law  
19 equivalents, against: the Purchaser (as defined in the Settlement APA), Lillian Zacky,  
20 individually, as trustee of the Robert D. Zacky and Lillian D. Zacky Trust U/D/T dated  
21 7/26/88 and as trustee of the Lillian D. Zacky Trust U/D/T dated 7/26/88, Scott Zacky,  
22 7915 Deep Creek LLC, 20115 Del Oro Road, Apple Valley, LLC, 18606 Lords Road,  
23 Helendale, LLC and the Samuel, LLC (collectively, the "Lillian Entities").
- 24 2. On the Effective Date, the Committee shall cause to be dismissed, with prejudice, all  
25 pending actions against: the Lillian Entities, including (i) the pending DIP Appeal and  
26 (ii) the Lien Challenges against the Lillian Entities.
- 27  
28

- 1           3. The Committee shall withdraw the Committee Sale Objection and support the approval  
2           of the entry of a sale order providing for the sale of substantially all of the Debtor's  
3           assets free and clear of all liens, claims and encumbrances (the "Sale Transaction") in  
4           accordance with the terms set forth below and reflected in the revised agreed Asset  
5           Purchase Agreement dated February 6, 2013 by and between the Robert and Lillian  
6           Trust and the Debtor (the "Settlement APA") submitted for approval by this Court on  
7           February 7, 2013.
- 8           4. The Settlement approved pursuant to this Order shall be effective (the "Effective  
9           Date") upon the earlier of: (i) entry of an order by this Court approving the Sale  
10          Transaction; or (ii) the withdrawal of the Purchaser from the Sale Transaction prior to  
11          the entry of an Order approving the Sale Transaction.
- 12          5. Under the Sale Transaction, but in all respects subject to the actual terms of the  
13          Settlement APA:
  - 14              a. The Purchaser shall assume the executory contracts and unexpired leases as  
15              provided for by the Settlement APA. Purchaser shall be responsible for  
16              payment of (i) the estate's obligations for the Assumed Contracts and  
17              Potentially Assumed Contracts (as defined in the Settlement APA), and (ii) cure  
18              costs on all Assumed Contracts as set forth in the Settlement APA.
  - 19              b. The Purchaser shall assume all outstanding tax obligations of the Debtor as of  
20              the closing of the Sale Transaction, up to \$500,000.
  - 21              c. The Purchaser shall provide offers of employment to all employees of the  
22              Debtor on substantially the same terms and shall assume all outstanding  
23              employment obligations including, without limitation, vacation pay, holiday  
24              and sick-leave time and health and workers' compensation benefits and  
25              obligations. The Purchaser shall assume any and all WARN Act claims related  
26              to termination of Debtor's employees, if any, resulting from the Sale  
27              Transaction.



- 1 d. The Purchaser shall be responsible for the preparation and filing of the Debtor's  
2 2012 tax returns and the returns for any pre-effective date 2013 stub period.
- 3 e. On the closing date under the Settlement APA, the Purchaser shall pay or  
4 provide to the estate:
- 5 i. Cash in the amount of \$2.9 million (including \$1.3 million for unbudgeted  
6 Committee professional fees and expenses, \$550,000 for Imperial Capital fees  
7 and expenses, \$400,000 for Debtor's professional fees and expenses from  
8 closing on the Sale Transaction through the effective date of a plan of  
9 reorganization or liquidation or appointment of a chapter 7 trustee, \$433,000  
10 for Committee professional fees and expenses from closing on the Sale  
11 Transaction through the effective date of a plan of reorganization or  
12 liquidation or appointment of a chapter 7 trustee, and \$150,000 for post-  
13 confirmation liquidating trust or chapter 7 trustee fees and expenses);
- 14 ii. Cash in an amount sufficient to pay any additional unbudgeted fees and  
15 expenses (above fees and expenses which are provided for in this Order, the  
16 DIP Facility and/or the Settlement APA) of estate professionals incurred on  
17 or before the date of closing on the Sale Transaction;
- 18 iii. A secured note in the principal amount of \$6.4 million to fund a Bankruptcy  
19 Code § 503(b)(9) escrow settlement fund (the "503(b)(9) Note"); provided,  
20 however, that the difference between the finally allowed amount of  
21 § 503(b)(9) claims and \$6.4 million (net of fees and expenses directly related  
22 to actions disputing the § 503(b)(9) claims, which shall be on a contingency  
23 basis and subject to a maximum cap of \$500,000), shall be split 50% to the  
24 Debtor's estate and 50% to the Purchaser. The 503(b)(9) Note shall mature 6  
25 months following the closing on the Sale Transaction, bear interest at 4% per  
26 annum, pay interest quarterly in arrears, be secured by a lien, subject only to  
27 liens existing as of the closing, on the assets as set forth on the form of  
28

1 503(b)(9) Note, and ancillary security documents, if any, attached to the  
2 Settlement APA, and shall include cross default provisions with the Creditor  
3 Recovery Note.

4 iv. A secured note in the principal amount of \$3.5 million dollars (the "Creditor  
5 Recovery Note"), provided, however, that the principal amount of the  
6 Creditor Recovery Note shall be increased by the amount of any defense costs  
7 incurred by the Debtor's estate and damages owed by the Debtor's estate to  
8 Pitman as a result of the DIP Lender's bid to purchase the Debtor's assets  
9 and/or the Debtor's decision not to proceed with the Pitman Purchase  
10 Agreements. The Creditor Recovery Note shall mature two years following  
11 the closing, bear interest at 4% per annum, pay interest quarterly in arrears, be  
12 secured by a lien subject only to liens existing as of the closing on the assets  
13 as set forth on the form of Creditor Recovery Note, and ancillary security  
14 documents, if any, attached to the Settlement APA and shall include cross  
15 default provisions with the 503(b)(9) Note.

16 v. All of the amounts to be paid as decreed above are a carve out from the  
17 Robert and Lillian Trust's collateral for the benefit of the specific uses  
18 outlined herein, thereby resolving all of the DIP Lender's remaining carve out  
19 obligations under the Final DIP Order. The DIP Lender shall receive a  
20 release of all carve out obligations upon funding or providing all of the  
21 foregoing.

22 vi. The Purchaser's alleged claims and liens on any and all assets of the Debtor  
23 are hereby subordinated to the allowed amount of administrative and priority  
24 claims incurred through the effective date of a plan of reorganization or  
25 liquidation or the appointment of a chapter 7 trustee, but no funds shall be  
26 paid by the Purchaser at closing on account of this obligation, and Purchaser  
27 shall pay such claims, if any, when allowed in the bankruptcy case.

- 1           6. The Purchaser shall assume at the closing on the Sale Transaction in accordance  
2           with the Settlement APA all accounts payable and other trade payables incurred by  
3           Seller after the Petition Date in the ordinary course of business that remain unpaid  
4           as of the closing (the “Post-Petition Payables”); provided, however, the Post-  
5           Petition Payables shall in no event include any obligations for any fees, expenses or  
6           other amounts owed by Seller to attorneys, consultants, advisors or other  
7           “professional persons” (as such term is defined in the Bankruptcy Code) in  
8           connection with the Debtor’s bankruptcy case, the Transactions (as such term is  
9           defined in the Settlement APA) or the Settlement APA, other than ordinary course  
10          attorneys and professionals.
- 11          7. On the Effective Date, the Lillian Entities shall be deemed to have waived all  
12          claims they may have against the Debtor, and shall not participate in any  
13          distributions to creditors of the Debtor’s estate. No entity owned 100% by either  
14          Lillian Zacky and/or Scott Zacky shall assert any claims against the Debtor’s estate.
- 15          8. The Robert and Lillian Trust shall withdraw all objections to fee applications filed  
16          by Committee professionals and waives its right to object to any and all fee  
17          applications filed by Committee professionals in the future.
- 18          9. The estate’s claims against insiders other than the Lillian Entities or against  
19          Richard Zacky, Integrated Grain & Milling, Inc., AB Ag Service Inc., American  
20          Huntsman, LLC, Big Feather Ranch, LLC, Lucky Wishbone, LLC, ZF Enterprises  
21          LLC, Richard Zacky as the trustee of the Richard N. Zacky Irrevocable Trust dated  
22          11/25/07 (the “Richard Entities”), Sharon Zacky Wilensky and Sharon Zacky  
23          Wilensky Irrevocable Trust Dated 11/26/2007 (the “Richard and Sharon Entities”),  
24          and claims by the Richard and Sharon Entities shall be addressed by the Debtor’s  
25          estate. The Lillian Entities shall not object to the expunging of any such claims. In  
26          the event that the Lillian Entities are adjudged liable on any claim for  
27          indemnification, contribution or otherwise relating to a cause of action held or  
28



1 asserted by or on behalf of the Debtor against any party, the Debtor and the estate  
2 waive any judgment or right of recovery of the Debtor or its estate against any  
3 party to the extent necessary to eliminate (up to the value of the Debtor's or  
4 estate's claim) any such indemnification, contribution or other claim against any  
5 Lillian Entity. The Settling Parties consent to the granting of standing and  
6 authority to the Committee to pursue the any and all claims against the Richard  
7 Entities on behalf of the Debtor's estate and the Committee is authorized and  
8 granted standing to pursue such claims. Notwithstanding any other provisions of  
9 this Order, the Committee shall have the primary responsibility for filing any  
10 objection to or otherwise contesting the validity of the secured claim of Richard  
11 Zacky, individually or as the trustee of Richard N. Zacky Irrevocable Trust dated  
12 11/25/07, the fees for which are included under the amounts set forth paragraph  
13 5(e) above. The deed of trust (the "Richard Lien") of Richard Zacky, individually,  
14 or as trustee of the Richard N. Zacky Irrevocable Trust dated 11/25/07  
15 (collectively, "Richard"), shall remain on the real estate located at 16395 19th  
16 Avenue, Lemoore, California and the Hanford 57 property, located in Hanford,  
17 California (collectively, the "Secured Real Property") and shall remain subject to  
18 the automatic stay; provided, however, that the Committee shall have responsibility  
19 for the payment or other disposition of that certain secured promissory note in the  
20 amount of \$1 Million in favor of Richard (the "Richard Note") and the removal of  
21 the Richard Lien from the Secured Real Property. If the Richard Lien is not  
22 removed from the Secured Real Property prior to the payment in full of the  
23 Creditor Recovery Note, the Richard Lien shall be removed from the Secured Real  
24 Property and shall be transferred and become a perfected first priority security  
25 interest in the cash paid under the Creditor Recovery Note and deposited in a  
26 separate blocked account. The Richard Lien shall remain on the Secured Real  
27 Property until the Creditor Recovery Note is paid in full and the Richard Lien is  
28

1 transferred and becomes a perfected first priority security interest in the cash paid  
2 under the Creditor Recovery Note. Notwithstanding any other provisions of the  
3 Settlement APA, this Order or any order approving the Sale Transaction, any  
4 accounts receivable owed by the Richard Entities to the Debtor's estate are not  
5 being sold as part of the Sale Transaction and shall be retained by the Debtor's  
6 estate.

7 10. Bankruptcy Code Section 503(b)(9) claims shall be treated as follows:

- 8 a. Non-insider creditors asserting § 503(b)(9) claims may elect to settle their  
9 § 503(b)(9) claims as follows: (i) the 503(b)(9) claim shall be allowed and  
10 paid in an amount equal to 75% of the value of goods received by the  
11 Debtor during the period from September 17, 2012, to October 7, 2012 (the  
12 "Period"), and not paid for; (ii) payment of the allowed 503(b)(9) claim  
13 shall be made from proceeds of the 503(b)(9) Note as such funds become  
14 available to the estate; (iii) the claimant shall waive any lien rights and  
15 secured claims; and (iv) the Debtor and the estate shall waive all  
16 Bankruptcy Code chapter 5 causes of action against the settling claimant.  
17 The Debtor and its estate shall reserve and may only assert defenses related  
18 to whether goods were received during the Period and whether invoices  
19 issued with respect to such goods were paid. As part of the Western Milling  
20 lien settlement described below, Western Milling also agrees to opt into the  
21 75% settlement set forth in this paragraph.
- 22 b. Non-insider creditors asserting § 503(b)(9) claims that do not opt to accept  
23 the foregoing settlement shall be entitled to litigate to recover the full  
24 amount of their asserted § 503(b)(9) claims, and the Debtor and its estate  
25 shall retain all defenses thereto. Bankruptcy Code chapter 5 causes of  
26 action shall not be waived against non-settling 503(b)(9) claimants.

11. The Debtor and its bankruptcy estate hereby waive and release all chapter 5 causes of action against non-insiders (and the Lillian Entities), except that the Debtor and its estate or their successors may: (a) assert such chapter 5 causes of action for the purposes of set-off or asserting affirmative defenses; and (b) pursue affirmative recoveries under chapter 5 of the Bankruptcy Code against non-insider creditors who assert 503(b)(9) and do not opt into the settlement provided for in paragraph 10(a) above. Any chapter 5 claims pursued against non-insiders to obtain an affirmative recovery shall only be pursued to the extent that the amount potentially recoverable exceeds \$50,000. The estate shall only be liable for payment of filing fees and expenses incurred in connection with prosecution of chapter 5 causes of action against non-insiders. All attorneys' fees associated with any such claims shall be paid on a contingency fee basis from the proceeds of any such action which is successfully prosecuted. Nothing contained herein shall in any way restrict or limit the rights of the Debtor, its estate or their successors to pursue chapter 5 claims against any insider of the Debtors or any of the Richard Entities; provided, however, that, in the event that the Lillian Entities face any claim for indemnification, contribution or otherwise based on an estate cause of action against any party, the estate waives any recovery on account of such affirmative claims to the extent necessary to eliminate any such indemnification, contribution or other claim against any Lillian Entity.

12. The Purchaser shall provide the estate, any liquidating trust under a confirmed chapter plan and any chapter 7 trustee, if appointed, with reasonable access to books and records and necessary assistance through the closing of such liquidating trust.

13. The Purchaser agrees to cooperate with the Debtor, the Committee or their successors in connection with the pursuit of any avoidance claims or other claims



of the Debtor excluded from the Sale Transaction pursuant to Section 2.2(k) of the Settlement APA.

14. Western Milling shall waive and release its claim to a lien on certain assets of the Debtor pursuant to a UCC-1 financing statement filed on August 15, 2012, Western Milling and shall receive from the proceeds of the 503(b)(9) Note, the lower of (a) \$400,000, or (b) 75% of the proceeds of the 503(b)(9) Note that are allocated to the estate upon the reduction of the Note.

15. The Settlement is reflected in the provisions of this Order, the Settlement APA, and the documents entered into in connection with this Order and the Settlement APA. No prior discussion or oral agreements shall be deemed to exist between the Settling Parties or to bind the Settling Parties with respect to the subject matter of the Settlement.

16. The Settlement shall bind and inure to the benefit of each of the Settling Parties' respective successors and assigns, including any liquidating trust that becomes the successor to the Debtor under a confirmed chapter 11 plan and any chapter 7 trustee, if appointed.

17. The rights and obligations of the Settling Parties with respect to the Settlement shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of California, and federal bankruptcy law to the extent applicable.

18. Any legal proceeding to enforce the Settlement may be brought in this Bankruptcy Court, according to the motion practice procedures of Local Bankruptcy Rule 9014-1, and waiving the application if any of Bankruptcy Rule 7001. The Settling Parties stipulate to personal jurisdiction and venue in this Bankruptcy Court and waive any contention of forum non conveniens or other basis to the contrary.

19. Except as set forth herein, the Settlement cannot be modified, amended, or changed except in a writing executed by all of the Settling Parties, and approved by order of this Court.

1 20. Each of the Settling Parties shall execute and deliver any and all additional papers,  
2 documents, and other assurances and shall do any and all acts or things reasonably  
3 necessary in connection with the performance of their obligations under the  
4 Settlement to carry out the express intent of the Settling Parties in entering into the  
5 Settlement.

6 21. Nothing in any other order of this Court or contained in any plan of reorganization  
7 or liquidation confirmed in this bankruptcy case, or in any subsequent or converted  
8 cases of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code, shall  
9 conflict with or derogate from the provisions of the Settlement or the terms of this  
10 Order.

11 22. If the Purchaser fails to close the Sale Transaction for any reason whatsoever, all  
12 alleged claims and liens of the Purchaser on any and all of the Debtor's assets,  
13 including (without limitation) the proceeds of any sale of any of the Debtor's  
14 assets, shall be subordinated to all costs of winding up the Debtor's estate, all  
15 administrative claims, priority claims, an amount equal to all sums that would have  
16 been due on the 503(b)(9) Note and the Creditor Recovery Note, and all other  
17 obligations due to the estate from the Purchaser pursuant to this Settlement or the  
18 Settlement APA.

19 23. Notwithstanding any provision set forth herein, the releases provided to the Lillian  
20 Entities (with the exception of Lillian Zacky, individually and as Trustee of the  
21 Robert and Lillian Trust) and to any other party shall not be effective until such  
22 party executes a declaration or certification agreeing to be bound by the terms of  
23 the Settlement as set forth herein. Upon the execution of such declaration or  
24 certification, such party shall be treated as a Settling Party in accordance with the  
25 Settlement and the terms of this Order.

Prepared and presented by:

**FOX ROTHSCHILD LLP**

By: /s/ Michael A. Sweet

Michael A. Sweet

and

**LOWENSTEIN SANDLER LLP**

Jeffrey D. Prol. (admitted *pro hac vice*)

Wojciech F. Jung (admitted *pro hac vice*)

Bruce S. Nathan (admitted *pro hac vice*)

*Co-Counsel to the Official Committee of Unsecured Creditors*

Dated: February 21, 2013



Thomas C. Holman

United States Bankruptcy Judge



# EXHIBIT 5

**Hank M. Spacone, CPA**

700 University Avenue, Suite 100, Sacramento, California 95825

Telephone: (916) 489-6250 / Facsimile: (916) 482-2860

[hspacone@thg-sac.com](mailto:hspacone@thg-sac.com)

**Resume of Qualifications**

Hank Spacone is a licensed and practicing certified public certified public accounting with over 25 years of experience. He has served as a Chapter 11 bankruptcy trustee in both the Northern and Eastern District of California. He has been providing consulting services to corporate and individual clients covering many industries. He has extensive experience in complex corporate reorganization and bankruptcy liquidations. Additional skills include experience in developing financial structuring for public/private partnership projects through private placements and public offerings. Hank Spacone has also served as the chief financial officer of a public traded company.

**Education**

University of Redlands (B.A.)

Golden Gate University (MBA)

**Licenses**

Certified Public Accountant

General Building Contractor

Real Estate Broker

**Professional Affiliations**

American Institute of Certified Public Accountants

California Society of Certified Public Accountants

Nation Association of Bankruptcy Trustees

California Bankruptcy Forum –SVC – Past Board of Directors/Treasurer

California Receivers Forum – SVC

**References**

Hank Spacone can provide references in several industries upon request.

### **Summary of Qualifications**

I am fully qualified to discharge the duties of a Plan Agent Trustee in all circumstances. A summary of my relevant skill set is below:

- Consultant for many businesses in connection with complex reorganizations;
- Chapter 11 Trustee and Plan Agent for cases in both the Eastern and Northern Districts of California for over 20 years;
- Strong business background dealing with a wide range of significant operational and financial issues,
- Nearly all of my engagements require regular reporting to many parties to include the courts, the Office of the United States Trustee, creditors and creditors' committees, regulatory agencies, taxing authorities, and board of directors. Consistent, accurate, and frequent communications help to prevent surprises and keep small problems from expanding.

In any project, the primary task is to rank the objectives and the measures of success. Many times this includes the following:

- Identifying and prioritizing goals and periodically refining those goals;
- Evaluating periodically whether the goals can be achieved faster or more cost-effectively through other means;
- Laying out and prioritizing the tasks necessary to achieve the goals, and refining those tasks periodically; and
- Develop a timetable and always be working towards closure – without loose ends.

Working with companies in transition is my business. I am often charged with maintaining a business operation while attempting to maximize going concern value. In doing so, I work closely with the senior management, inside and outside counsel, and financial personnel. I have preserved, and in numerous cases, enhanced asset value during my tenure. Examples of engagements that display the skills described above include:

### ***Claims Management***

#### **In re John D. and Judith Reynen and Christo and Sarah Bardis.**

These cases were administratively consolidated. Debtors' principal business was real estate development, through ownership interest held in several corporations and more than 110 special purpose entities. I was appointed as Plan Agent to administer in excess of \$100 million of assets, to include a wide range of real estate holdings, and manage the claims review and objection process for filed and scheduled claims in excess of \$1.2 billion. Evaluation and resolution of litigation and various tax matters required special emphasis, both with a significant impact on the distribution to creditors.



**In re Benjamin and Gail Catlin.** I was appointed trustee of a trust created through the Plan of Reorganization. The Plan provided for the transfer of commercial and retail real estate with an estimated value in excess of \$80 million into the trust. My administration included the management and liquidation of the properties. This has included negotiating with lenders for extensions and forbearance agreements on loans in excess \$60 million. Scheduled and filed claims in excess of \$130 million.

**In re iSyndicate, Inc.** Debtor was a leader in syndication services for web sites that posted third-party content such as news, articles, photos, games and comics. The Debtor raised approximately \$55 million in working capital and approximately \$20 million in advertising credits from investors. I was appointed as the Plan Administrator to complete the Debtor's liquidation, manage litigation, manage the claims review and approval process and distribute available funds to creditors. In excess of 2,500 claims were processed.

### ***Crisis Management Experience***

**In re At Home Corp.** I was recruited to become the successor trustee of a litigation trust. The trustee had unexpectedly resigned. The Trust assets included a large number of litigation assets that would be the primary source of future recoveries for beneficiaries. Managing these assets required that I quickly evaluate the litigation and develop a cost benefit analysis of each individual matter. In addition, I had to manage the legal staffing – which involved multiple law firms engaged on different financial terms. Legal fees were the primary drain on the assets under my administration, and could only be justified if their value exceeded their cost. Within a few weeks, I restructured all professional compensation arrangements to align them with the interest of my beneficiaries, turning most into contingency arrangements.

I was responsible to thousands of beneficiaries, and all that entails – data management, process management to address communications, changes of address, distribution of tax reporting materials and many other issues. As the result of many years of personally designing such systems and knowing how to integrate the legal and accounting issues involved, I successfully created a system that was operational within a few weeks.

Finally, at the same time, I had to address the corporate requirements of my position. This included sourcing insurance for myself and my board of directors, complying with tax laws, engaging and terminating employees, directing investment of substantial trust assets, and reconciling trust financial records to begin the project on a clean slate, and maintaining key financial records, all directed at bringing the project to an end on a specified timetable and within a budget.

**In re Russ Transmission.** Administration was to liquidate industrial facilities worth millions of dollars. I ran the operations of the company for over a year while executing the marketing strategy I designed. This required working directly with management, lenders, outside accountants, various law firms and other professionals. Because the company lacked seasoned financial management, I also assumed those responsibilities while the company operated. All creditors were paid 100% of their claims, plus interest.

### ***Public Relations Experience***

**In re Solano County Economic Opportunity Counsel ("SCEOC").** In liquidating SCEOC, I was responsible for a large, high profile non-profit corporation in Solano County, California that had run over 20 different programs, including Head Start. The case was closely followed by the media. To control the media coverage, I scheduled quarterly meetings for the benefit of program managers, past employees, and creditors. I made a point of contacting the various reporters and news commentators who had expressed an interest in the case. The media coverage was positive during the administration of the case. Employees and creditors made relatively few calls to ask questions or make complaints, which reduced operating costs and improved staff morale.

### ***Always Look for the Faster, Better, Cheaper Solution***

**In re Mainland Marketing.** I always look ahead for ways to make the job faster and more efficient. In one engagement, I developed a specialized computer program to assist in the management and processing of several thousand beneficiary claims. In addition, to performing most of the accounting work, I engaged off-season accounting staff who were on the payrolls of local accounting firms. Because I was using the firms' excess capacity, I received a substantial discount on fees. This case was thought to be administratively insolvent. By improving recoveries and minimizing costs, however, creditors received over thirty cents on the dollar.

### ***Public Company Experience***

**Atlantis Mining & Manufacturing.** As Chief Financial Officer of a public company, I gained a great deal experience in working with in-house corporate counsel, financial officers, contract attorneys, outside accounting firms, and other professionals through a wide range of projects. During my tenure, the company developed, mined and processed gold-bearing ore from multiple claims. I was responsible for the general financial affairs of the company, including taking the company through an initial public offering, reporting to the SEC, and overseeing the year end audit process. I also worked closely with underwriters, brokerage firms, and media professionals.

# EXHIBIT 6



## LIQUIDATING DEBTOR POST-CONFIRMATION BUDGET

Post Confirmation Expense Category	Projected Amount	Notes
Plan Administrator Fees	\$60,000	Subject to Cap on Limitations on Compensation in Plan, projected time period 2 years from Confirmation, and including administration of distributions to 503(b)(9) creditors and general unsecured creditors
Plan Administrator/Liquidating Debtor Counsel Fees	\$150,000	Projected amount to resolve final claim objections filed prior to plan confirmation, assisting with plan compliance and obtaining required approvals under Plan; (excludes any contingency fee arrangements -- including any new claims objections filed after confirmation on contingency fee basis)
Projected US Trustee Fees	\$20,000	Assumes 1 <sup>st</sup> Distribution to 503(b)(9) Creditors made while case is open, with a \$13,000 quarterly fee due, and three quarters at \$1,950 (i.e. 2d distribution to general unsecured creditors projected to occur after case is closed)
Plan Administrator Litigation Professionals	\$150,000 <sup>1</sup>	Projected Litigation Costs for Plan Administrator Contingency Fee Counsel and hourly rate fees and costs for addressing pending appeals
Misc.	\$15,000 <sup>2</sup>	Misc. Costs (e.g. bank fees) and line item overage amounts
Committee Non-Litigation Hourly Professional Fees		\$50,000, but under Plan to be paid from proceeds of \$3.5M Creditor or any amounts allocated for Committee Professionals in the DIP Lender Settlement Order, but not fully expended as of the Effective Date
Total	\$395,000	Projected Sources of funds: Carve out for Plan Administrator from Sale Proceeds: \$150,000; Excess funds from \$6.4M 503(b)(9) Note: \$135,000 Additional Projected Cash on hand on Plan Effective Date: \$110,000

<sup>1</sup> Plus such additional amounts as were allocated in the DIP Lender Settlement Order for Committee Professionals, but not fully expended as of the Effective Date and not expended for Committee Non-Litigation Hourly Professional Fees.

<sup>2</sup> Plus such additional amounts as were allocated in the DIP Lender Settlement Order for Professionals other than Committee Professionals, but not fully expended as of the Effective Date.

# EXHIBIT 7

DONALD W. FITZGERALD, State Bar No. 095348  
THOMAS A WILLOUGHBY, State Bar No. 137597  
JENNIFER E. NIEMANN, State Bar No. 142151  
FELDERSTEIN FITZGERALD  
WILLOUGHBY & PASCUZZI LLP  
400 Capitol Mall, Suite 1750  
Sacramento, CA 95814  
Telephone: (916) 329-7400  
Facsimile: (916) 329-7435  
dfitzgerald@ffwplaw.com  
twilloughby@ffwplaw.com  
jniemann@ffwplaw.com

Attorneys for Zacky Farms, LLC

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:

ZACKY FARMS, LLC, a  
California limited liability  
company,

Debtor-In-Possession.

CASE NO. 12-37961-B-11

DCN: FWP-12 and FWP-22

Date: February 20, 2013  
Time: 2:00 p.m.  
Courtroom: 32  
501 I Street, 6<sup>th</sup> Floor  
Sacramento, CA

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING  
THE SALE OF ASSETS OF THE DEBTOR OUTSIDE THE ORDINARY COURSE OF  
BUSINESS, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, AND (C) GRANTING  
RELATED RELIEF**

Upon the Motion (docket no. 240) (as supplemented and amended, the "Sale Motion") of Zacky Farms, LLC (the "Debtor") for, among other things, the entry of an order pursuant to §§ 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtor to: (a) enter into an asset purchase agreement with the party submitting the highest or best bid for the Debtor's assets in connection with the Debtor's sale and bidding



1 process; (b) sell the Purchased Assets<sup>1</sup> free and clear of all Liens (as defined below) with such  
2 sale to be in accordance with the terms and conditions of the Agreement; and (c) granting related  
3 relief; and this Court having entered an order on November 20, 2012 (docket no. 323) (the “Bid  
4 Procedures Order”) authorizing the Debtor to conduct, and approving the terms and conditions of,  
5 an auction as set forth in the Bid Procedures Order (the “Auction”) to consider offers for  
6 substantially all of the Debtor’s assets, establishing a date for the Auction, and approving, among  
7 other things: (i) certain bidding procedures (the “Bidding Procedures”) to be used in connection  
8 with the Auction and (ii) the form and manner of notice of the Auction and Bidding Procedures;  
9 and the Court having established the date of the hearing on the Sale Motion (the “Sale Hearing”);  
10 and the Auction having been held on January 15, 2013; and at the Auction, the Debtor having  
11 determined that the Robert D. Zacky and Lillian D. Zacky Trust U/D/T dated July 26, 1988  
12 (together with its successors and assigns, the “Purchaser”) submitted the highest and best bid for  
13 the Debtor’s assets; and at the initial hearing on the Sale Motion conducted on January 18, 2013  
14 (the “Initial Sale Hearing”), Pitman Family Farms (“Pitman”) having increased its backup bid on  
15 the record with the Court (the “Increased Backup Bid”); and the Purchaser having informed the  
16 Debtor after the Initial Sale Hearing that it no longer wished to acquire the Debtor’s assets  
17 pursuant to the higher and better bid it submitted at the Auction and preferred that the Debtor  
18 accept the Increased Backup Bid; and in light of the Purchaser’s unwillingness to go forward with  
19 the transaction set forth in the bid submitted by the Purchaser at the Auction, the Debtor having  
20 determined that it was in the best interest of the Debtor to accept the Increased Backup Bid  
21 submitted by Pitman at the Initial Sale Hearing and to proceed with a sale of substantially all of  
22  
23  
24  
25

---

26 <sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset  
27 Purchase Agreement dated February 6, 2013 (the “Agreement”) by and between the Purchaser and the Debtor, a copy  
28 of which was filed with the Court on February 7, 2013 (docket no. 989).

1 the Debtor's assets (including the Purchased Assets) to Pitman; and the Debtor having executed  
2 two Asset Purchase Agreements (Lots 1 and 2) with Pitman (collectively, the "Pitman Purchase  
3 Agreements"), each dated January 30, 2013, pursuant to which the Debtor agreed to sell  
4 substantially all of the Debtor's assets (including the Purchased Assets) to Pitman (subject to the  
5 Debtor's right to continue to solicit higher or better offers for its assets (including the Purchased  
6 Assets)); and prior to the hearing to approve the Pitman Purchase Agreements conducted on  
7 February 6, 2013 (the "Second Sale Hearing"), the Purchaser having submitted an offer for the  
8 Purchased Assets reflected in the terms of the Agreement and in the proposed settlement by and  
9 among the Debtor, the Committee and the Purchaser (both in its capacity as purchaser and as  
10 debtor-in-possession lender to the Debtor) filed with this Court on February 7, 2013 (docket no.  
11 993) (the "Settlement"); and the Debtor having determined that the Purchaser's offer reflected in  
12 the Agreement and the Settlement was a higher and better offer for the Purchased Assets than the  
13 offer set forth in the Pitman Purchase Agreements; and the Debtor having determined that it was  
14 in the best interests of the Debtor, its creditors and its estate to accept the higher and better offer  
15 made by the Purchaser and reflected in the Agreement and the Settlement and to proceed with a  
16 sale of the Purchased Assets to the Purchaser; and the Debtor having executed the Agreement and  
17 the Settlement with the Purchaser pursuant to which the Debtor has agreed to sell the Purchased  
18 Assets to the Purchaser (subject to approval by this Court and satisfaction of the closing  
19 conditions set forth in the Agreement); and the Court having jurisdiction to consider the Sale  
20 Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and  
21 in consideration of the Sale Motion, the relief requested therein, and the responses thereto being a  
22 core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested  
23 parties and all responses and objections to the Sale Motion having been duly noted in the record  
24 of the Sale Hearing; and upon the record of the Sale Hearing, the Initial Sale Hearing, the Second  
25  
26  
27  
28

1 Sale Hearing and all other pleadings and proceedings in these Bankruptcy Cases, including  
2 (without limitation) the Sale Motion and the proof of service regarding the Sale Motion (docket  
3 no. 246), the Debtor's Supplement and Third Amendment to the Sale Motion (docket no. 987),  
4 the Second Supplemental Declaration of Keith F. Cooper in Support of the Debtor's Motion to  
5 Sell Substantially all of the Debtor's Assets (the "Supplemental Cooper Declaration") (docket  
6 no.988), the Agreement filed as an Exhibit to the Supplemental Cooper Declaration (docket no. -  
7 989), the Proof of Service regarding the Supplemental and Second Amendment (docket no. 991)],  
8 the Notice of: (1) Amendment to and Continued Hearing on Sale Motion; (2) Continued Hearing  
9 on Motion to Sell Free and Clear of Liens and Interests; (3) Amendment to and Continued  
10 Hearing on Motions to Assume and Assign Executory Contracts; and (4) Continued Hearing on  
11 Settlement Motion (docket no. 1001), and the Proof of Service of such Notice (docket no. 1002) ;  
12 and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor,  
13 its estate, its stakeholders and all other parties in interest; and the Court having made its findings  
14 of fact and conclusions of law orally on the record at the Sale Hearing; and after due deliberation  
15 and sufficient cause appearing therefore;

18 IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>2</sup>

19 A. The findings and conclusions set forth herein constitute the Court's findings of fact  
20 and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding  
21 pursuant to Bankruptcy Rule 9014.

22 B. To the extent any of the following findings of fact constitute conclusions of law,  
23 they are adopted as such. To the extent any of the following conclusions of law constitute  
24 findings of fact, they are adopted as such.

25  
26  
27 <sup>2</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the  
28 Sale Motion are incorporated herein.



1 C. The Court has jurisdiction over this matter and over the property of the Debtor's  
2 estate, including the Purchased Assets to be sold, transferred, or conveyed pursuant to the  
3 Agreement, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" pursuant  
4 to 28 U.S.C. § 157(b)(2). Venue of this Bankruptcy Case and the Sale Motion in this district is  
5 proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6  
7 D. This Order constitutes a final and appealable order within the meaning of 28  
8 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the  
9 Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court  
10 expressly finds that there is no just reason for delay in the implementation of this Order, and  
11 expressly directs entry of judgment as set forth herein.

12  
13 E. The statutory bases for the relief requested in the Sale Motion and for the  
14 approvals and authorizations herein are (i) Bankruptcy Code §§ 102, 105, 362, 363 and 365, and  
15 (ii) Bankruptcy Rules 2002, 4001, 6004, 6006 and 9014.

16 F. On October 8, 2012 (the "Petition Date"), the Debtor filed a voluntary petition  
17 under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in  
18 possession and management of its business and properties as debtor-in-possession pursuant to  
19 Bankruptcy Code §§ 1107(a) and 1108.

20  
21 G. As evidenced by the proofs of service filed with the Court (docket nos. 246, 274,  
22 277, 377, 381, 407, 442, 471, 499, 875, 991 and 1002), proper, timely, adequate, and sufficient  
23 notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the  
24 Purchased Assets free and clear of all Liens, and the Transactions has been provided in  
25 accordance with Bankruptcy Code §§ 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 6006,  
26 9006, 9007, 9008 and 9014, the local rules of the Court, the procedural due process requirements  
27 of the United States Constitution, and in compliance with the Bid Procedures Order.  
28

1 H. Notice and a reasonable opportunity to object and/or be heard regarding the Sale  
2 Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and  
3 clear of all Liens, the Transactions and the entry of this Order have been provided to all interested  
4 Persons, including, without limitation, (i) all Persons listed in the Debtor's Master Service List in  
5 the Bankruptcy Cases, (ii) all Persons listed in the Debtor's mailing matrix in the Bankruptcy  
6 Cases, (iii) all Persons, including Governmental Authorities, known to the Debtor that may have a  
7 right to file a fine, penalty or other Lien against the Purchased Assets or the Debtor, (iv) all  
8 Persons known to Debtor or appearing of public record to assert any Lien in or upon the  
9 Purchased Assets, (v) all governmental taxing authorities that have, or as a result of the sale of the  
10 Purchased Assets may have, Claims, contingent or otherwise, against the Debtor, (vi) all Persons  
11 that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under  
12 Bankruptcy Rule 2002, (vii) all creditors (whether their Claims are liquidated, contingent, or  
13 unmatured) of the Debtor, (viii) all known applicable Governmental Authorities with material  
14 responsibility for environmental, pension, securities, agriculture, food and drug, and other  
15 regulatory matters, (ix) the Office of the United States Trustee for the Eastern District of  
16 California, (x) each known Governmental Authority that has issued or granted a Permit; and (xi)  
17 all Persons that heretofore expressed to the Debtor a serious interest in purchasing the Purchased  
18 Assets. Other parties interested in bidding on the Purchased Assets were provided, pursuant to  
19 the Bid Procedures Order, sufficient information to make an informed judgment on whether to bid  
20 on the Purchased Assets.

24 I. The Purchased Assets are property of the Debtor's estate and title thereto is vested  
25 in the Debtor's estate.

26 J. The Debtor has demonstrated a sufficient basis and the existence of reasonable and  
27 appropriate circumstances requiring it to enter into the Agreement and sell the Purchased Assets  
28

1 under Bankruptcy Code § 363 and such actions are appropriate exercises of the Debtor's business  
2 judgment and in the best interests of the Debtor and its estate.

3 K. The Bidding Procedures set forth in the Bid Procedures Order were non-collusive,  
4 substantively and procedurally fair to all parties.

5 L. The Debtor and its professionals have complied, in good faith, in all respects with  
6 the Bid Procedures Order. As demonstrated by the declarations filed prior to the Sale Hearing  
7 and the testimony and other evidence proffered or adduced at the Sale Hearing, including those  
8 regarding the thorough marketing efforts and a competitive sale process conducted in accordance  
9 with the Bid Procedures Order, the Debtor (a) afforded interested potential purchasers a full, fair,  
10 and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer  
11 to purchase all of the Debtor's assets, (b) provided potential purchasers, upon request, sufficient  
12 information to enable them to make an informed judgment on whether to bid on the Purchased  
13 Assets, and (c) considered any bids submitted on or before the deadline to submit bids as set forth  
14 in the Bidding Procedures.

15 M. The offer of the Purchaser, upon the terms and conditions set forth in the  
16 Agreement and the Settlement, including the form and total consideration to be realized by the  
17 Debtor pursuant to the Agreement, (i) is the highest and best offer for the Purchased Assets  
18 received by the Debtor, (ii) is fair and reasonable, (iii) is in the best interests of the Debtor's  
19 estate, (iv) constitutes full and fair consideration and reasonably equivalent value for the  
20 Purchased Assets, and (v) will provide a greater recovery for the Debtor's creditors and other  
21 interested parties than would be provided by any other available alternative.

22 N. As set forth in the Committee's Reply Memorandum in Support of Joint Motion  
23 for Approval of Settlement Among the Official Committee of Unsecured Creditors, the Debtor  
24 and the Robert and Lillian Zacky Trust Pursuant to Bankruptcy Rule 9019 (Docket 1065) (the  
25  
26  
27  
28



1 “Settlement Reply”), the Debtor’s economic situation and the interests of all of the Debtor, the  
2 Debtor’s equity holders and the Debtor’s creditors justify a sale of the Debtor’s assets now,  
3 before confirmation of a chapter 11 plan. For the reasons set forth in the Settlement Reply, the  
4 sale of the Debtor’s assets and entry into the Settlement for which approval is sought under  
5 docket number FWP-25 is not a sub rosa plan.  
6

7 O. The Purchaser, on account of the secured obligations provided under that certain  
8 Senior Secured Super Priority Debtor-in-Possession Loan and Security Agreement between the  
9 Purchaser and the Debtor (the “DIP Credit Agreement”), and as approved by the orders entered  
10 by this Court approving the DIP Credit Agreement on an interim and final basis, has the right to  
11 “credit bid” pursuant to Bankruptcy Code § 363(k) for the Purchased Assets.  
12

13 P. The Purchaser is purchasing the Purchased Assets (including the Assumed  
14 Contracts) in good faith, is a good faith purchaser within the meaning of Bankruptcy Code §  
15 363(m), is an assignee in good faith of the Assumed Contracts, and is, therefore, entitled to the  
16 protections of Bankruptcy Code § 363(m) with respect to the Purchased Assets and to the fullest  
17 extent permitted under the Bankruptcy Code. The Agreement was negotiated and entered into in  
18 good faith, based upon arm’s length bargaining, and without collusion or fraud of any kind.  
19 Neither the Debtor nor the Purchaser have engaged in any conduct that would prevent the  
20 application of Bankruptcy Code § 363(m) or cause the application of, or implicate, Bankruptcy  
21 Code § 363(n) to the Agreement or to the consummation of the Transactions and transfer of the  
22 Purchased Assets and Assumed Contracts to the Purchaser. Additionally, the Purchaser has  
23 otherwise proceeded in good faith in all respects in connection with this proceeding in that: (i) the  
24 Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring  
25 the Purchased Assets, (ii) all consideration to be paid by the Purchaser and other agreements or  
26 arrangements entered into by the Purchaser in connection with the sale have been disclosed, (iii)  
27  
28

1 the Purchaser has not violated Bankruptcy Code § 363(n) by any action or inaction, and (iv) the  
2 negotiation and execution of the Agreement and any other agreements or instruments related  
3 thereto was in good faith.

4 Q. The Debtor has full power and authority to execute the Agreement (and all other  
5 documents contemplated thereby) and consummate the Transactions, and the sale of the  
6 Purchased Assets has been duly and validly authorized by all necessary actions on the part of the  
7 Debtor. No consents or approvals, other than as may be expressly provided for in the Agreement,  
8 are required by the Debtor to consummate such Transactions.

10 R. The Debtor has advanced sound business reasons for seeking to enter into the  
11 Agreement and to sell and/or assume and sell and assign the Purchased Assets, as more fully set  
12 forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise  
13 of the Debtor's business judgment to sell the Purchased Assets and to consummate the  
14 Transactions contemplated by the Agreement. Notwithstanding any requirement for approval or  
15 consent by any Person, the transfer of the Purchased Assets to the Purchaser is a legal, valid, and  
16 effective transfer of the Purchased Assets.

18 S. The terms and conditions of the Agreement, including the consideration to be  
19 realized by the Debtor pursuant to the Agreement, are fair and reasonable, and the Transactions  
20 contemplated by the Agreement are in the best interests of the Debtor's estate.

22 T. The Purchased Assets shall be (a) sold free and clear of all liens, deeds of trust,  
23 mortgages, encumbrances and security interests that are on, filed against, attached to or otherwise  
24 asserted against the Purchased Assets and are identified in paragraph 9 of this Order, and (b) sold  
25 free and clear of all liens, deeds of trust, mortgages, encumbrances, and security interests that  
26 Purchaser could acquire title to the Purchased Assets free and clear of under applicable law absent  
27  
28

1 notice to the holder (collectively, the “Liens”), other than the Permitted Liens. Purchaser would  
2 not enter into the Agreement to purchase the Purchased Assets otherwise.

3 U. The Liens (other than the Permitted Liens) shall attach to the Creditor Recovery  
4 Note (and the proceeds thereof) in the same priority and subject to the same defenses and  
5 avoidability, if any, as before the Closing; provided, however, that, any Liens to be released,  
6 waived or otherwise removed in accordance with the terms of the Settlement (including, without  
7 limitation, all Liens held by the Purchaser arising from or relating to the DIP Credit Agreement)  
8 shall not attach to the Creditor Recovery Note.  
9

10 V. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and  
11 effective transfer of the Purchased Assets and shall vest Purchaser with all right, title, and interest  
12 of the Debtor to the Purchased Assets free and clear of any and all Liens (other than the Permitted  
13 Liens). Except as specifically provided in the Agreement or the Settlement, the Purchaser shall  
14 not assume, take subject to or become liable for any Liens other than the Permitted Liens and  
15 Assumed Liabilities.  
16

17 W. The transfer of the Purchased Assets to the Purchaser free and clear of all Liens  
18 (other than the Permitted Liens), to the extent permitted by law, will not result in any undue  
19 burden or prejudice to any holders of any Liens, because all such Liens of any kind or nature  
20 whatsoever shall attach to the Creditor Recovery Note (and the proceeds thereof) to be received  
21 by the Debtor from the Purchaser at the Closing in the order of their priority, with the same  
22 validity, force, and effect which they now have as against the Purchased Assets and subject to any  
23 claims and defenses the Debtor or other parties may possess with respect thereto; provided,  
24 however, that, any Liens to be released, waived or otherwise removed in accordance with the  
25 terms of the Settlement (including, without limitation, all Liens held by the Purchaser arising  
26 from or relating to the DIP Credit Agreement) shall not attach to the Creditor Recovery Note. All  
27  
28



1 persons having Liens against or in the Purchased Assets shall be forever barred, estopped and  
2 permanently enjoined from pursuing or asserting such Liens (other than the Assumed Liabilities  
3 and Permitted Liens) against the Purchaser, any of its assets, property, successors or assigns, or  
4 the Purchased Assets.

5 X. The Debtor may sell the Purchased Assets free and clear of all Liens (other than  
6 the Permitted Liens) because, in each case, one or more of the standards set forth in Bankruptcy  
7 Code § 363(f) has been satisfied. Those holders of Liens in or with respect to the Purchased  
8 Assets who received notice of the Sale Motion who did not object, or who withdrew their  
9 objections, to the sale of the Purchased Assets and the Sale Motion are deemed to have consented  
10 pursuant to Bankruptcy Code § 363(f)(2). All objections to the Sale Motion have been overruled  
11 or resolved. Those holders of Liens in or with respect to the Purchased Assets who did object fall  
12 within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately  
13 protected by having their Liens, if any, attach to the Creditor Recovery Note (and the proceeds  
14 thereof), with such Liens being subject to treatment as prescribed in the Debtor's chapter 11 plan  
15 or by separate order of this Court; provided, however, that, any Liens to be released, waived or  
16 otherwise removed in accordance with the terms of the Settlement (including, without limitation,  
17 all Liens held by the Purchaser arising from or relating to the DIP Credit Agreement) shall not  
18 attach to the Creditor Recovery Note.

19 Y. Not selling the Purchased Assets free and clear of all Liens (other than the  
20 Permitted Liens) would adversely impact the Debtor's estate, and the sale of the Purchased Assets  
21 other than one free and clear of all Liens (other than the Permitted Liens) would be of  
22 substantially less value to the Debtor's estate.

23 Z. The Court will separately enter its Order (the "Assumption Order") on Debtor's  
24 Motion for Authority to Assume and Assign Contracts to the Purchaser as the approved assignee  
25  
26  
27  
28

1 of the Assumed Contracts.

2 AA. Cause has been shown as to why this Order should not be subject to the stay  
3 provided by Bankruptcy Rules 6004(h), 6006(d) and 7062.

4 BB. Time is of the essence in consummating the Transactions. In order to maximize  
5 the value of the Purchased Assets and to avoid an event of default under the DIP Credit  
6 Agreement, it is essential that the sale of the Purchased Assets occur within the time constraints  
7 set forth in the Agreement. Accordingly, there is cause to order that the stay contemplated by  
8 Bankruptcy Rules 6004(h), 6006(d) and 7062 not apply to this Order.

9 CC. At and effective as of the Closing, the Purchaser shall assume sole responsibility  
10 for paying and satisfying the Assumed Liabilities as provided in the Agreement. For the  
11 avoidance of doubt, nothing in this Order (including, without limitation, any provisions in this  
12 Order regarding the sale, transfer or conveyance of the Purchased Assets free and clear of Liens)  
13 nor in the Agreement shall be construed to mean that the Purchaser is not assuming from the  
14 Debtor and thereafter becoming solely responsible for the payment, performance and discharge of  
15 the Assumed Liabilities as provided in the Agreement. After the Closing, the Debtor shall have  
16 no liability whatsoever with respect to the Assumed Liabilities. The Purchaser shall have no  
17 obligations whatsoever with respect to any liabilities of the Debtor other than the Assumed  
18 Liabilities.  
19  
20  
21

22 NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS  
23 HEREBY ORDERED, ADJUDGED AND DECREED THAT:

24 1. The relief requested in the Sale Motion is granted, and the Agreement and the  
25 provisions thereof are approved in their entirety, subject to the terms and conditions contained  
26 herein.  
27  
28

1           2.     All objections, responses, reservations of rights, and requests for continuance  
2 concerning the Sale Motion are resolved in accordance with the terms of this Order, the order  
3 approving the Settlement and as set forth in the record of the Sale Hearing. To the extent any  
4 such objection, response, reservation of rights, or request for continuance was not otherwise  
5 withdrawn, waived, or settled, it is overruled and denied on the merits.  
6

7           3.     Notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale  
8 of the Purchased Assets free and clear of all Liens, and the Transactions was fair and equitable  
9 under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy  
10 Rules 2002, 6004, and 6006.  
11

12           4.     The sale of the Purchased Assets, the terms and conditions of the Agreement  
13 (including all schedules and exhibits affixed thereto), and the Transactions be, and hereby are,  
14 authorized and approved in all respects.

15           5.     The sale of the Purchased Assets and the consideration provided by the Purchaser  
16 under the Agreement, including, without limitation, the portion of the consideration that consists  
17 of a credit bid under Bankruptcy Code § 363(k), are fair and reasonable and shall be deemed for  
18 all purposes to constitute a transfer for reasonably equivalent value and fair consideration under  
19 the Bankruptcy Code and any other applicable law.  
20

21           6.     The Purchaser is hereby granted and is entitled to all of the protections provided to  
22 a good faith purchaser under Bankruptcy Code § 363(m), including, without limitation, with  
23 respect to all of the Transactions (part of which includes the transfer of the Assumed Contracts as  
24 part of the sale of the Purchased Assets pursuant to Bankruptcy Code § 365 and the Assumption  
25 Order).  
26  
27  
28



1           7.       The Debtor shall be, and hereby is, authorized and directed to fully assume,  
2 perform under, consummate, and implement the terms of the Agreement together with any and all  
3 additional instruments and documents that may be necessary or desirable in connection with  
4 implementing and effectuating the terms of the Agreement, this Order, and/or the sale of the  
5 Purchased Assets including, without limitation, certificates, deeds, assignments, and other  
6 instruments of transfer, and to take all further actions as may reasonably be requested by the  
7 Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the  
8 Purchaser, or reducing to possession, any or all of the Purchased Assets or Assumed Liabilities,  
9 as may be necessary or appropriate to the performance of the Debtor's obligations as  
10 contemplated by the Agreement, without any further limited liability company action or orders of  
11 this Court.  
12

13           8.       The Debtor and each other Person or entity having duties or responsibilities under  
14 the Agreement, any agreements or instruments related thereto or this Order, and its respective  
15 directors, officers, employees, members, agents, representatives, and attorneys, are authorized and  
16 empowered, subject to the terms and conditions contained in the Agreement and this Order, to  
17 carry out all of the provisions of the Agreement and any related agreements or instruments; to  
18 issue, execute, deliver, file, and record, as appropriate, the documents evidencing and  
19 consummating the Agreement and any related agreements or instruments; to take any and all  
20 actions contemplated by the Agreement, any related agreements or instruments, or this Order; and  
21 to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments,  
22 guaranties, intercreditor agreements, releases, indentures, mortgages, quitclaim deeds, deeds, bills  
23 of sale, assignments, leases, or other agreements or documents and to perform such other acts and  
24 execute and deliver such other documents, as are consistent with, and necessary, desirable or  
25 appropriate to implement, effectuate, and consummate, the Agreement, any related agreements or  
26  
27  
28

1 instruments, this Order and the Transactions, all without further application to, or order of, the  
2 Court or further action by its respective directors, officers, employees, members, managers,  
3 agents, representatives, and attorneys, and with like effect as if such actions had been taken by  
4 unanimous action of the respective directors, officers, employees, members, agents,  
5 representatives, and attorneys of such entities. Specifically, Keith Cooper, sole manager and  
6 Chief Restructuring Officer of the Debtor, and Sean Harding, Senior Vice President of  
7 Restructuring of the Debtor, are hereby each granted all corporate and organizational authority to  
8 enter into or otherwise execute on behalf of the Debtor any and all documents, agreements and/or  
9 instruments that they deem necessary or desirable in connection with the consummation of the  
10 Transactions. The Debtor is further authorized and empowered to cause to be filed with the  
11 secretary of state of any state or other applicable officials of any applicable Governmental  
12 Authority any and all certificates, agreements, or amendments necessary or appropriate to  
13 effectuate the Transactions and this Order, and all such other actions, filings, or recordings as  
14 may be required under appropriate provisions of the applicable laws of all applicable  
15 Governmental Authorities or as any of the officers of the Debtor may determine are necessary or  
16 appropriate. The execution of any such document or the taking of any such action shall be, and  
17 hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting  
18 the generality of the foregoing, this Order shall constitute all approvals and consents, if any,  
19 required by the limited liability company laws of the State of California and all other applicable  
20 business, corporation, trust, and other laws of the applicable Governmental Authorities with  
21 respect to the implementation and consummation of the Agreement, any related agreements or  
22 instruments, this Order, and the Transactions.

23  
24  
25  
26 9. Pursuant to Bankruptcy Code §§ 363(f) and 105(a), to the fullest extent permitted  
27 by law, effective as of the Closing, the sale of the Purchased Assets by the Debtor to the  
28

Purchaser shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any Person and shall vest the Purchaser with all right, title, and interest of the Debtor in and to the Purchased Assets, free and clear of the following liens, deeds, mortgages, encumbrances and security interests:

- a. All liens of Dreisbach Enterprises (“Driesbach”), including, without limitation, that certain warehouse lien encumbering goods stored by the Debtor at Dreisbach’s warehouse;
- b. All liens of Lillian D. Zacky Trust dated July 26, 1988 (the “Lillian Zacky Trust”), including, without limitation, those liens asserted by the Lillian Zacky Trust on 2222 & 2240 S. East Ave., Fresno, CA 93721 and 1111 Navy Dr., Stockton, CA 95206 pursuant to certain Deeds of Trust dated September 7, 2012 and recorded September 11, 2012 as Instrument No. 2012-0129194, and dated September 28, 2012 and recorded October 2, 2012 as Instrument No. 2012-127834, respectively, and any amendments, continuations or other documents related thereto;
- c. All liens of the Purchaser, as successor in interest to Wells Fargo Bank, N.A., including, without limitation, those certain Deeds of Trust dated October 13, 2009 and any amendments, continuations or other documents related thereto and any liens that are evidenced or perfected by the UCC Financing Statement filed with the California Secretary of State as filing number 09-7214548474 dated November 17, 2009 and any amendments, continuations or other documents related thereto;
- d. All liens of the Purchaser arising out of or related to the DIP Credit Agreement approved by Final Order dated November 13, 2012 (docket no.



- 292) and any and all amendments, modifications and extensions thereof;
- e. All liens of Western Milling, LLC (which liens shall be released in accordance with the terms of the Settlement), including, without limitation, any poultry supply lien evidenced by the UCC Financing Statement filed with the California Secretary of State as filing number 12-7325193760 dated August 15, 2012 and any amendments, continuations or other documents related thereto;
- f. All liens of Office Max North America, including, without limitation, any liens asserted in its proof of claim number 48 filed in this bankruptcy case on November 1, 2012;
- g. All liens of Dave Dodge Service, Inc., including, without limitation, any liens asserted in its proof of claim number 248 filed in this bankruptcy case on December 13, 2012;
- h. All liens of B&B Quality Food Providers, including, without limitation, any liens asserted in its proof of claim number 363 filed in this bankruptcy case on January 22, 2013;
- i. All liens of Wei Chan DDS, including, without limitation, any liens asserted in its proof of claim number 118 filed in this bankruptcy case on November 26, 2012;
- j. The lien of Idaho Avenue Land Company on the North Half of the Northeast Quarter of Section 24, Township 19 South, Range 21 East in Hanford, CA (APN: 028-030-032) pursuant to that certain Deed of Trust recorded March 28, 2006, as Instrument No. 0608952, and any amendments, continuations or other documents related thereto;

1 k. The lien of USA Petroleum Corporation asserted on the North Half of the  
2 Northeast Quarter of Section 24, Township 19 South, Range 21 East in  
3 Hanford, CA (APN: 028-030-032) pursuant to that certain Deed of Trust  
4 recorded March 28, 2006, as Instrument No. 0608953 and any  
5 amendments, continuations or other documents related thereto; and

6  
7 l. The lien of GFC LLC asserted on North Half of the Northeast Quarter of  
8 Section 24, Township 19 South, Range 21 East in Hanford, CA (APN:  
9 028-030-032) pursuant to that certain Deed of Trust recorded March 28,  
10 2006, as Instrument No. 0608954 and any amendments, continuations or  
11 other documents related thereto.

12 10. The deed of trust (the "Richard Lien") of Richard Zacky, individually, or as trustee  
13 of the Richard N. Zacky Irrevocable Trust dated 11/25/07 (collectively, "Richard"), shall remain  
14 on the real estate located at 16395 19th Avenue, Lemoore, California and the Hanford 57  
15 property, located in Hanford, California (collectively, the "Secured Real Property") and shall  
16 remain subject to the automatic stay; provided, however, that the Committee shall have  
17 responsibility for the payment or other disposition of that certain secured promissory note in the  
18 amount of \$1 Million in favor of Richard (the "Richard Note") and the removal of the Richard  
19 Lien from the Secured Real Property. If the Richard Lien is not removed from the Secured Real  
20 Property prior to the payment in full of the Creditor Recovery Note, the Richard Lien shall be  
21 removed from the Secured Real Property and shall be transferred and become a perfected first  
22 priority security interest in the cash paid under the Creditor Recovery Note and deposited in a  
23 separate blocked account. The Richard Lien shall remain on the Secured Real Property until the  
24 Creditor Recovery Note is paid in full and the Richard Lien is transferred and becomes a  
25 perfected first priority security interest in the cash paid under the Creditor Recovery Note.  
26  
27  
28

11. To the fullest extent permitted by law, effective as of the Closing, the assumption of the Assumed Liabilities by the Purchaser shall constitute a legal, valid and effective delegation and assignment of all Assumed Liabilities to the Purchaser and shall divest the Debtor of all liability with respect to any Assumed Liabilities.

12. The sale of the Purchased Assets is not subject to avoidance pursuant to Bankruptcy Code § 363(n).

13. At the Closing, the Debtor shall be, and hereby is, authorized, empowered, and directed, pursuant to Bankruptcy Code §§ 105, 363(b), 363(f), 363(k) and 365, and pursuant to the Assumption Order, to sell the Purchased Assets and to assume and assign the Assumed Contracts to the Purchaser. The sale of the Purchased Assets shall vest the Purchaser with all right, title and interest of the Debtor to the Purchased Assets free and clear of any and all Liens (other than the Permitted Liens), to the fullest extent permitted by law, with all such Liens to attach only to the Creditor Recovery Note with the same priority, validity, force, and effect, if any, as they now have in or against the Purchased Assets, subject to all claims and defenses the Debtor may possess with respect thereto. Following the Closing Date, no holder of any Liens in the Purchased Assets (other than the Permitted Liens and Assumed Liabilities) shall interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Liens, or any actions that the Debtor may take in the Bankruptcy Cases.

14. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Liens (other than the Permitted Liens) shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtor and the Purchaser, and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and execute and

1 deliver any and all documents and instruments that either the Debtor or the Purchaser deem  
2 necessary, desirable or appropriate to implement and effectuate the terms of the Agreement and  
3 this Order.

4           15. Notwithstanding other provisions of this Order, the warehouse lien of Dreisbach  
5 shall to the extent disputed attach to the proceeds of the sale, with undisputed amounts to be  
6 satisfied by application by Dreisbach of a cash deposit posted by the Debtor (and held by  
7 Driesbach) in the approximate amount of \$168,176, to the outstanding secured indebtedness due  
8 Driesbach secured by the warehouse lien, with any portion of the deposit that may remain after  
9 such application to be remitted promptly to the Debtor. To the extent that the cash deposit is  
10 insufficient to cover the undisputed amount secured by the warehouse lien, the Debtor shall pay  
11 such difference from the debtor-in-possession facility in the ordinary course of business and/or  
12 from the proceeds of the sale on Closing. Any liens securing disputed amounts shall attach to the  
13 proceeds of the sale to be resolved by separate motion or adversary proceeding.

14           16. On or before the Closing Date, the Debtor's creditors are authorized and directed  
15 to execute such documents and take all other actions as may be necessary to release any Liens  
16 (other than the Permitted Liens) of any kind against the Purchased Assets, as such Liens may  
17 have been recorded or may otherwise exist, and deliver such executed documents to the Debtor's  
18 counsel to be held in escrow. If any Person that has filed financing statements or other  
19 documents or agreements evidencing any Liens in or against the Purchased Assets (other than the  
20 Permitted Liens) shall not have delivered to the Debtor's counsel prior to the Closing after request  
21 therefor, in proper form for filing and executed by the appropriate parties, termination statements,  
22 instruments of satisfaction, or releases of all such Liens that the Person has with respect to the  
23 Purchased Assets, the Debtor is hereby authorized to execute and file such statements,  
24 instruments, releases, and other documents on behalf of the Person with respect to such Purchased  
25  
26  
27  
28



1 Assets at Closing, and the Purchaser is hereby authorized to execute and file such statements,  
2 instruments, releases, and other documents on behalf of the Person with respect to such Purchased  
3 Assets after the Closing. In addition, after Closing, the Purchaser and the Debtor are authorized  
4 to file a copy of this Order in the appropriate real estate records, the secretary of state records and  
5 any other filing location selected by the Purchaser or the Debtor and, once filed, this Order shall  
6 constitute conclusive evidence of the release of all Liens (other than Permitted Liens) from the  
7 Purchased Assets.  
8

9 17. To the greatest extent available under applicable law, (a) the Purchaser shall be  
10 authorized, as of the Closing Date, to operate under any license, permit, approval, certificate of  
11 occupancy, authorization, operating permit, registration, plan and the like of any Governmental  
12 Authority relating to the Purchased Assets (collectively, the "Permits"), (b) all such Permits are  
13 deemed to have been, and hereby are, deemed to be transferred to the Purchaser as of the Closing  
14 Date, and (c) each Governmental Authority that has issued or granted a Permit and who did not  
15 object to the sale of the Purchased Assets shall be deemed to have consented to the transfer of  
16 such Permit to the Purchaser as of the Closing Date.  
17

18 18. All of the Debtor's interests in the Purchased Assets to be acquired by the  
19 Purchaser under the Agreement shall be, as of the Closing Date and upon the occurrence of the  
20 Closing, transferred to and vested in the Purchaser. Upon the occurrence of the Closing, this  
21 Order shall be considered and shall constitute for any and all purposes a full and complete general  
22 assignment, conveyance, and transfer of the Purchased Assets acquired by the Purchaser under  
23 the Agreement and/or a bill of sale, deeds, or assignment transferring good and marketable,  
24 indefeasible title and interest in the Purchased Assets to the Purchaser.  
25

26 19. On and after the Closing Date, each of the Debtor's creditors is authorized and  
27 directed to execute such documents and take all other actions as may be necessary to release their  
28

1 respective Liens (other than the Permitted Liens) against the Purchased Assets, if any, as may  
2 have been recorded or may otherwise exist.

3 20. All Persons presently or on or after the Closing Date in possession of some or all  
4 of the Purchased Assets are directed to surrender possession of the Purchased Assets to the  
5 Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

6  
7 21. The Purchaser has not assumed and is not otherwise obligated for any of the  
8 Debtor's liabilities or for any Claims against the Debtor or the Purchased Assets other than the  
9 Assumed Liabilities as set forth in the Agreement, and the Purchaser has not purchased any of the  
10 Excluded Assets as set forth in the Agreement. Consequently, all Persons, Governmental Units  
11 (as defined in Bankruptcy Code §§ 101(27) and 101(41)), and holders of Liens (other than the  
12 Permitted Liens) or Claims (other than Claims included in the Assumed Liabilities) based upon or  
13 arising out of liabilities retained by the Debtor are hereby enjoined from taking any action against  
14 the Purchaser or the Purchased Assets to recover any Liens or Claims on account of any liabilities  
15 of the Debtor other than Assumed Liabilities pursuant to the Agreement. All Persons holding or  
16 asserting any Liens or Claims on, against or relating to the Excluded Assets are hereby enjoined  
17 from asserting or prosecuting such Liens or Claims or any cause of action against the Purchaser  
18 or the Purchased Assets for any liability associated with the Excluded Assets.

19  
20 22. Except to the extent expressly included in the Assumed Liabilities or otherwise  
21 provided in the Agreement, pursuant to Bankruptcy Code §§ 105 and 363, all Persons including,  
22 but not limited to, the Debtor, the Committee, all debt holders, equity security holders, the  
23 Debtor's employees or former employees, Governmental Authorities, lenders, parties to or  
24 beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien of any  
25 kind or nature whatsoever against, in, or with respect to any of the Debtor or the Purchased Assets  
26 (other than the Permitted Liens), arising under or out of, in connection with, or in any way  
27  
28

1 relating to the Debtor, the Purchased Assets, the operation of the Debtor's business prior to the  
2 Closing Date, or the transfer of the Purchased Assets to the Purchaser, shall to the full extent  
3 provided by law be forever barred, estopped, and permanently enjoined from asserting,  
4 prosecuting, or otherwise pursuing such Lien, including assertion of any right of setoff or  
5 subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order,  
6 against the Purchaser or any affiliate, successor or assign thereof and each of their respective  
7 current and former members, officers, directors, attorneys, employees, partners, affiliates,  
8 financial advisors, and representatives (each of the foregoing in its individual capacity), or the  
9 Purchased Assets.  
10

11         23. Subject to the terms of the Agreement, the Agreement and any related agreements  
12 and/or instruments may be waived, modified, amended, or supplemented by agreements of the  
13 Debtor and the Purchaser, without further action or order of the Court; provided, however, that  
14 any such waiver, modification, amendment, or supplement is not materially adverse to the Debtor  
15 or its estate.  
16

17         24. All rights of Imperial Capital for payment for its services as the Debtor's  
18 investment banker in connection with the Transactions as provided for in the Engagement Letter  
19 approved by Court Order entered November 11, 2012 (docket no. 311) shall attach to the cash  
20 sale proceeds allocated to the payment of Imperial Capital under the Settlement.  
21

22         25. The failure specifically to include any particular provisions of the Agreement or  
23 any related agreements or instruments in this Order shall not diminish or impair the effectiveness  
24 of such provisions, it being the intent of the Court, the Debtor, and the Purchaser that the  
25 Agreement and any related agreements and instruments are authorized and approved in their  
26 entirety with such amendments thereto as may be made by the parties in accordance with this  
27 Order prior to Closing.  
28

1           26.    No bulk sale law or any similar law of any state or other jurisdiction shall apply in  
2 any way to the sale and the Transactions contemplated by the Agreement.

3           27.    Nothing in this Order shall alter or amend the Agreement and the obligations of  
4 the Debtor and the Purchaser thereunder.

5           28.    This Order and the Agreement shall be binding upon and govern the acts of all  
6 Persons including, without limitation, the Debtor, the Debtor's estate, the Purchaser, and each of  
7 their respective directors, officers, employees, members, managers, agents, successors, and  
8 permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for  
9 the Debtor's estate, any trustee appointed in a Chapter 7 case if these Bankruptcy Cases are  
10 converted from Chapter 11, any Chapter 11 plan agent or trustee, liquidating agent or trustee, or  
11 any other agent or trustee charged with administering any assets of the Debtor or its estate, all  
12 creditors of either Debtor (whether known or unknown), all equity holders of the Debtor, holders  
13 of Liens in or with respect to the Purchased Assets, filing agents, filing officers, title agents,  
14 recording agencies, secretaries of state, and all other Persons who may be required by operation  
15 of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release  
16 any documents or instruments, or who may be required to report or insure any title in or to the  
17 Purchased Assets.

18           29.    Nothing in any order of this Court or contained in any plan of reorganization or  
19 liquidation confirmed in these Bankruptcy Cases, or in any subsequent or converted cases of the  
20 Debtor under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with the terms of this  
21 Order.

22           30.    The stays imposed by Bankruptcy Rules 6004(h), 6006(d), and 7062 are hereby  
23 waived, and this Order shall be effective and enforceable immediately upon entry and its  
24 provisions shall be self-executing. In the absence of any Person obtaining a stay pending appeal,  
25  
26  
27  
28



1 the Debtor and the Purchaser are free to close under the Agreement at any time, subject to the  
2 terms of the Agreement. In the absence of any Person obtaining a stay pending appeal, if the  
3 Debtor and the Purchaser close under the Agreement, the Purchaser shall be deemed to be acting  
4 in “good faith” and shall be entitled to the protections of Bankruptcy Code § 363(m) as to all  
5 aspects of the Transactions if this Order or any authorization contained herein is reversed or  
6 modified on appeal.  
7

8 31. The automatic stay provisions of Bankruptcy Code § 362 are vacated and modified  
9 to the extent necessary to implement the terms and conditions of the Agreement and the  
10 provisions of this Order, and the stay imposed by Bankruptcy Rule 4001(a)(3) is hereby waived  
11 with respect thereto.

12 32. Purchaser acknowledges that it takes the Intellectual Property Rights subject to any  
13 restriction or limitation on their use that may result from that certain Trademark License  
14 Agreement dated October 5, 2001 between Foster Poultry Farms d/b/a Foster Farms and certain  
15 of its affiliates on the one hand, and Debtor and certain of its affiliates on the other. Purchaser  
16 agrees to be bound by the Trademark License Agreement as successor to, and as though it were,  
17 the “Licensors” as defined in the Trademark License Agreement, to the extent the Trademark  
18 License Agreement applies to the Intellectual Property Rights.  
19

20 33. To extent consistent with *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) (adopting  
21 *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984) test for pre-confirmation “related to”  
22 jurisdiction) and *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005) (adopting the *In*  
23 *re Resorts Int’l, Inc.*, 372 F.3d 154, 166-67 (3d Cir. 2004) test for post-confirmation “related to  
24 jurisdiction), this Court shall retain jurisdiction to enforce the terms and provisions of this Order,  
25 the Bid Procedures Order, and the Agreement (including, without limitation, all documents and  
26 instruments executed in connection with the Closing) in all respects and to decide any disputes  
27  
28

1 concerning this Order, the Agreement, or the rights and duties of the parties hereunder or  
2 thereunder or any issues relating to the Agreement and this Order including, but not limited to,  
3 the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and  
4 extent of the Purchased Assets and any Assumed Contracts, and all issues and disputes arising in  
5 connection with the relief authorized herein, inclusive of those concerning the transfer of the  
6 Purchased Assets free and clear of all Liens (except Permitted Liens). Without limiting the  
7 generality of the foregoing, to the extent that, notwithstanding the free and clear transfer  
8 provisions set forth in this Order, any Purchased Asset is transferred to the Purchaser subject to  
9 Liens that Debtor is obligated to sell free and clear of pursuant to the Agreement, the Court shall  
10 retain jurisdiction over such Purchased Asset after Closing to provide such relief.  
11

12           34. Notwithstanding any other provisions of this Order, the Agreement or any order  
13 approving the Settlement, any accounts receivable owed by the Richard Entities (as defined in the  
14 Settlement) to the Debtor's estate are not being sold as part of the Transactions and shall be  
15 retained by the Debtor's estate.  
16

17           35. The Lot 2 Pitman Purchase Agreement (which relates to the sale of the breeder  
18 ranches) is hereby approved by this Court as the Next Highest Bid (as defined in the Bid  
19 Procedures Order). In the event that the Purchaser fails to close the Transactions set forth in the  
20 Agreement, without further Order from this Court, the Debtor is hereby authorized to  
21 consummate the transactions contemplated by the Lot 2 Pitman Purchase Agreement and to sell  
22 and assign the applicable Purchased Assets to Pitman (and/or its permitted successors or assigns)  
23 in accordance with the Lot 2 Pitman Purchase Agreement (the "Alternative Pitman Sale"). With  
24 respect to the Alternative Pitman Sale, such sale, including the transfer of any Purchased Assets  
25 to Pitman (and/or its permitted successors and assigns), shall be conducted pursuant to and in  
26 accordance with this Order and Pitman (and/or its permitted successors and assigns) and the  
27  
28

Debtor shall receive the benefit of all rights and protections granted to Purchaser and the Debtor in this Order (as if Pitman has been substituted for the Purchaser for all applicable purposes hereunder), including, without limitation, the transfer of such Purchased Assets free and clear of the Liens (except Permitted Liens).

Prepared and presented by:

FELDERSTEIN FITZGERALD  
WILLOUGHBY & PASCUZZI LLP

By: /s/ Donald W. Fitzgerald  
Donald W. Fitzgerald

AND

KING & SPALDING LLP

Paul K. Ferdinands  
W. Austin Jowers

COUNSEL FOR THE DEBTOR

APPROVED BY:

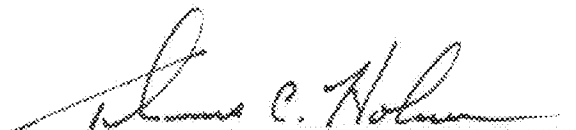
THE LOBEL FIRM, LLP

LOWENSTEIN SANDLER LLP

By: /s/ William N. Lobel  
William N. Lobel  
Attorneys for the Robert D. Zacky and Lillian  
D. Zacky Trust U/D/T July 26, 1988

By: /s/ Jeffrey D. Prol  
Jeffrey D. Prol  
Co-Counsel to the Official Committee of  
Unsecured Creditors

Dated: February 21, 2013

  
Thomas C. Holman  
United States Bankruptcy Judge