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Debtor-In-Possession  
7

8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11  
12 In re  
13 PACHECO BROTHERS GARDENING, INC.,  
14  
15 Debtor and Debtor-In-Possession.  
16

Case No. 17-40403 WJL

Chapter 11

**AMENDED COMBINED PLAN OF  
REORGANIZATION AND  
DISCLOSURE STATEMENT  
DATED JULY 31, 2017**

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1 **I. INTRODUCTION**

2 On February 13, 2017, Pacheco Brothers Gardening, Inc. (the “Debtor”) filed a voluntary  
3 petition under Chapter 11 of the United States Bankruptcy Code 11 U.S.C. § 101 et seq. (the  
4 “Bankruptcy Code”).

5 THE DOCUMENT YOU ARE READING IS A COMBINED PLAN OF  
6 REORGANIZATION AND DISCLOSURE STATEMENT. THERE WILL BE A COMBINED  
7 HEARING ON FINAL APPROVAL OF THE DISCLOSURE STATEMENT SECTION AND  
8 CONFIRMATION OF THE PLAN ON AUGUST 21, 2017 AT 2:30 P.M., COURTROOM 220  
9 OF THE UNITED STATES BANKRUPTCY COURT, 1300 CLAY STREET, OAKLAND,  
10 CALIFORNIA.

11 The Court, at a expedited hearing set by the Court on July 28, 2017, considered the  
12 adequacy of the Combined Plan of Reorganization and Disclosure Statement. After requesting  
13 specific changes, the Court preliminarily approved the Disclosure Statement, without prejudice to  
14 creditors or any party in interest to timely object to the Disclosure Statement and Plan, and be  
15 heard at the hearing on August 21, 2017.

16 **II. SUMMARY OF PLAN**

17 • The parties, which include the Debtor, the Del Conte Parties and the Pachecos (see  
18 definitions below) (the “Disputing Parties”) will use their best efforts to file and prosecute a plan  
19 of reorganization which provides for payment to unsecured creditors \$168,000 which the Debtor  
20 estimates will result in a payment to unsecured creditors ranging from 26% to 30% depending on  
21 the size of the unsecured creditor class.

22 • Prior to the commencement of this bankruptcy case, the Disputing Parties were  
23 involved in very contentious litigation for over one year as described in further detail below. As  
24 set forth below, pursuant to the terms of the Plan, the Del Conte Parties are committing to paying  
25 up to \$372,500 into Plan on the Effective Date and the Reorganized Debtor will pay \$168,000 to  
26 unsecured creditors over the next five (5) years, the Pachecos are obtaining certain assets; and all  
27 the Disputing Parties are releasing certain claims against each other. This Plan reflects the results  
28 of three days of mediation, and an eventual complex settlement, the terms of which are intended to

1 pay creditors more than they would obtain under any other scenario and settle all disputes among  
2 the Disputing Parties without the need for further litigation. The settlement is complicated and  
3 complex, and involves all the Disputing Parties.

4 • The Del Conte Parties will acquire the shares of the Debtor and the Pachecos will  
5 have no further involvement with the Reorganized Debtor. The Del Conte Parties are experienced  
6 in the landscape maintenance business and are qualified to operate the Reorganized Debtor. The  
7 Del Conte Parties will manage the Reorganized Debtor in order to implement the terms of the  
8 Plan. The Del Conte Parties will review claims, prosecute any objections, administer the payment  
9 of the claims per the terms of the Plan, and file Avoidance Claims if necessary.

10 • The Pachecos shall receive one of three divisions of the Debtor known as the  
11 Landscape Division when certain assets are transferred to an entity of which they are sole  
12 shareholders, Pacheco Landscape Company (“PLC”), including the assets set forth in Exhibit B  
13 of the Settlement Agreement which is attached as Exhibit 1 to this Combined Plan and Disclosure  
14 Statement, valued at approximately \$90,000 as well as ongoing unbilled jobs. The value of the  
15 assets were estimated by the Debtor after reviewing a two year old appraisal. The value of  
16 unbilled jobs will be established as of the Confirmation Date since that value is based on jobs in  
17 progress at the time of confirmation. The Reorganized Debtor will continue to operate the  
18 Maintenance and the Tractor divisions. The divisions are defined in paragraph V G. below.

19 • In exchange for the assets above and other consideration set forth herein, the  
20 Pachecos will waive any claims that they have against the Estate which include approximately  
21 \$390,239 in unpaid unsecured loans made to the Debtor, and the Estate will waive claims against  
22 the Pachecos, including Avoidance Claims. The Del Conte Parties will release their claims against  
23 the Estate which include claims for money lent, monies due Vision Recycling, any claims for  
24 damages as set forth in the State Court Action, and any claims that Del Conte believes he is owed  
25 under a consulting and/or wage agreement. The Del Conte Parties contend their claims total in the  
26 aggregate of \$3,500,000, and that a significant portion is secured.

27 • One of the largest unsecured creditors in this case is Fremont Bank. It filed a claim  
28 for \$711,000, plus interest and attorneys’ fees, which the Debtor estimates could bring its claim to

1 approximately \$800,000. The Pachecos personally guaranteed that debt, and provided additional  
2 collateral by securing the guarantee with deeds of trust on their two homes, each deed of trust  
3 securing an obligation in the maximum sum of \$400,000. On the Effective Date of the Plan,  
4 conditioned upon receiving a payment of \$300,000, Fremont Bank will release the Pachecos and  
5 reconvey the existing deeds of trust against their homes. Fremont Bank will be paid an additional  
6 \$300,000 under the Plan in equal monthly installments over 4 years commencing two months after  
7 the Effective Date. The \$300,000 balance will be secured by a lien on the assets of the  
8 Reorganized Debtor. In the event that the Debtor does not have the funds to pay all or any portion  
9 of the \$300,000 payment on the Effective Date, the Del Conte Parties will make the payment, as a  
10 requirement of confirmation of the Plan. It is anticipated that the Del Conte Parties will pay the  
11 full amount of the initial \$300,000 payment.

12       • In addition, the Del Conte Parties have deposited \$72,500 into Debtor's counsel  
13 trust account to be used to pay any non-operational Administrative Claims, subject to the terms of  
14 the Settlement Agreement, to confirm the Plan. The balance of any unused funds from the \$72,500  
15 will then be paid to PLC, which is owned 100% by the Pachecos. The Reorganized Debtor will  
16 pay up to \$30,000 (as set forth in the Settlement Agreement) for additional administrative fees not  
17 related to ordinary operations after all retainers are depleted, before the \$72,500 is applied to the  
18 Administrative claims. This payment is part of the consideration for the multi-party settlement as  
19 set forth in the Settlement Agreement.

20       • PLC and the Pachecos have agreed to a covenant not to compete as set forth in the  
21 Settlement Agreement. This covenant has exceptions for certain clients that PLC will be able to do  
22 business with, but also sets forth certain existing clients of the Debtor that PLC cannot solicit work  
23 from.

24       • Beginning on the tenth day from the Effective Date of the Plan, the Reorganized  
25 Debtor shall pay George and Lynn Pacheco \$10,000 monthly payments for six (6) months for a  
26 total of \$60,000. This payment is part of the Disputing Parties' Settlement Agreement.

27       • As part of the Settlement Agreement, while the parties are attempting to confirm  
28 this Plan, the Court approved a Management Agreement, pursuant to which the Del Conte Parties

1 are managing and operating the Maintenance Division and Tractor Division until the Effective  
2 Date of the Plan, unless otherwise terminated pursuant to the terms of the Management  
3 Agreement.

- 4 • On the Effective Date, all existing shares of the Debtor shall be cancelled and new  
5 shares will be issued to the Del Conte Parties who shall own 100% of the Reorganized Debtor.
- 6 • Upon the Effective Date of the Plan, the Pachecos and Del Conte Parties will  
7 mutually release each other from any and all claims.

### 8 **III. DISCLAIMERS**

9 THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT SECTION  
10 IS INCLUDED TO SOLICIT ACCEPTANCES OF THE PLAN. THE INFORMATION IN THIS  
11 DISCLOSURE STATEMENT SECTION SHOULD NOT BE RELIED UPON FOR ANY  
12 PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.

13 ANY PARTY WHO DOES NOT OBJECT TO THE DISCLOSURE STATEMENT  
14 SECTION DOES NOT WAIVE ANY RIGHTS TO OBJECT TO THE CONFIRMATION OF  
15 THE PLAN.

16 ALL CREDITORS SHOULD READ THE DISCLOSURE STATEMENT SECTION  
17 AND THE PLAN BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. STATEMENTS  
18 MADE IN THE DISCLOSURE STATEMENT SECTION ARE QUALIFIED IN THEIR  
19 ENTIRETY BY REFERENCE TO THE PLAN.

20 THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT SECTION  
21 ARE MADE BY THE PLAN PROPONENTS AS OF THE DATE HEREOF UNLESS  
22 OTHERWISE SPECIFIED. THE DELIVERY OF THE DISCLOSURE STATEMENT  
23 SECTION DOES NOT IMPLY THAT THERE HAS BEEN NO CHANGE IN THE  
24 INFORMATION SET FORTH HEREIN SINCE SUCH DATE. HOLDERS OF CLAIMS  
25 ENTITLED TO VOTE ON THE PLAN SHOULD READ THE DISCLOSURE STATEMENT  
26 SECTION AND THE PLAN AND CONSULT WITH COUNSEL OR OTHER ADVISORS  
27 PRIOR TO VOTING ON THE PLAN.

28



1 THE DISCLOSURE STATEMENT SECTION HAS BEEN PREPARED IN  
2 ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE  
3 AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT  
4 NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR  
5 OTHER NON-BANKRUPTCY LAW. THE DISCLOSURE STATEMENT SECTION HAS  
6 BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SEC, NOR HAS THE SEC  
7 PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED  
8 HEREIN. ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR  
9 TRANSFERRING SECURITIES OF OR CLAIMS AGAINST THE DEBTOR SHOULD  
10 EVALUATE THE DISCLOSURE STATEMENT SECTION AND THE PLAN IN LIGHT OF  
11 THE PURPOSE FOR WHICH THEY WERE PREPARED.

12 NOTHING IN THE DISCLOSURE STATEMENT SECTION IS AN ADMISSION OF  
13 ANY FACT OR LIABILITY BY THE PLAN PROPONENTS AND IS NOT ADMISSIBLE  
14 AGAINST THE PLAN PROPONENTS OR OTHER PARTY IN ANY PROCEEDING, NOR  
15 DOES THE DISCLOSURE STATEMENT SECTION PROVIDE ADVICE ON THE TAX OR  
16 OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS OR INTERESTS.  
17 YOU SHOULD CONSULT YOUR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS  
18 RESPECTING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

19 **IRS CIRCULAR 230 NOTICE**

20 TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS  
21 AND INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL  
22 TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS  
23 NOT INTENDED TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR  
24 INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED  
25 ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS  
26 WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN AND  
27 OTHER MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND  
28 INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR

1 CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

2 **IV. DEFINITIONS, INTERPRETATION, COMPUTATION OF TIME AND RULES**  
3 **OF CONSTRUCTION**

4 **A. Definitions**

5 The following terms (which appear in this Combined Plan and the Disclosure Statement as  
6 capitalized terms) have the following meaning as used in the Plan and Disclosure Statement:

7 1. "Administrative Claim" means a Claim for costs and expenses of administration  
8 allowed under Section 503(b) of the Bankruptcy Code and referred to in Section 507(a)(1) of the  
9 Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses  
10 incurred after the Petition Date of preserving the Estate and operating the business of the Debtor  
11 (such as wages, salaries or commissions for services); (b) compensation for legal, financial  
12 advisory, accounting and other services and reimbursement of expenses awarded or allowed under  
13 Sections 330(a) or 331 of the Bankruptcy Code; and (c) all fees and charges assessed against the  
14 Estate under 28 U.S.C. § 123.

15 2. "Allowed Claim" means a Claim against the Debtor to the extent that -

16 a. a Proof of Claim

17 (1) was timely filed; or

18 (2) is deemed filed under applicable law or by reason of  
19 an order of the Bankruptcy Court; and

20 b. (1) Any Interested Party or Debtor does not file an objection within a  
21 time fixed by the Bankruptcy Court and the Claim is not otherwise a Disputed Claim (but only to  
22 the extent that such Claim is not a Disputed Claim);

23 (2) the Claim is allowed (and only to the extent allowed)  
24 by a Final Order; or

25 (3) the Claim is allowed under the Plan.

26 3. "Allowed Amount" means the amount of any Claim against the Debtor determined  
27 in accordance with Sections 502 and 506(a) of the Bankruptcy Code and any other applicable  
28 Section of the Bankruptcy Code, and recognized by the Debtor as valid or allowed by Final Order

1 of the Court, except to the extent described or defined otherwise herein.

2 4. "Allowed Priority Claim" means an Allowed Claim entitled to priority pursuant to  
3 Sections 507(a)(4), (5) or (8) of the Bankruptcy Code.

4 5. "Allowed Secured Claim" means an Allowed Claim secured by a lien, security  
5 interest or other charge against property in which the Estate has an interest, or which is subject  
6 to set-off under Section 553 of the Bankruptcy Code, to the extent of the value, determined in  
7 accordance with Section 506(a) of the Bankruptcy Code, of the interest of the holder of such  
8 secured Claim in the Estate's interest in such property, or to the extent of the amount subject to any  
9 setoff, as the case may be.

10 6. "Avoidance Claims" means claims of the Debtor arising under 11 U.S.C. Sections  
11 544, 548, 547, 549 and 550.

12 7. "Bankruptcy Code" or "Code" means Title 11 of the United States Code, as now in  
13 effect or hereafter amended. All citations in the Plan to section numbers are to the Code unless  
14 otherwise expressly indicated.

15 8. "Bar Date" means the last date for filing unscheduled claims, claims that differ  
16 from the scheduled claims, or claims scheduled as disputed, contingent, or unliquidated. The Bar  
17 Date in this case set by the Bankruptcy Court for non-governmental units is June 19, 2017.

18 9. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday"  
19 (as defined in Bankruptcy Rule 9006(a)).

20 10. "Bankruptcy Rule" means the Federal Rules of Bankruptcy Procedure.

21 11.. "Case" means the within Chapter 11 proceeding known as Pacheco Brothers  
22 Gardening, Inc., Case No. 17-40403 pending before the Bankruptcy Court.

23 12.. "Claim" means any right to payment, whether or not such right is reduced to  
24 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, legal,  
25 equitable, secured or unsecured; or, a right to an equitable remedy for breach of performance if  
26 such breach gives rise to a right to payment, whether or not such right is an equitable remedy or is  
27 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
28 undisputed, secured or unsecured.

- 1           13.    "Claimants" or "Creditors" means persons or entities holding unsecured, secured or  
2 equity Claims.
- 3           14.    "Class" means any grouping into which Allowed Claims and interests are classified  
4 pursuant to the Plan.
- 5           15.    "Confirmation" means the entry by the Bankruptcy Court of the Confirmation  
6 Order.
- 7           16.    "Confirmation Date" means the date on which the Bankruptcy Court enters the  
8 Confirmation Order on the Court docket.
- 9           17.    "Confirmation Order" means the Order of the Bankruptcy Court confirming the  
10 Plan under Section 1129 of the Bankruptcy Code.
- 11          18.    "Debtor" means Pacheco Brothers Gardening, Inc., the debtor and debtor-in-  
12 possession in this Chapter 11 Case.
- 13          19.    "Del Conte Parties" means Tom Del Conte, TDDC Ventures, LLC and/or Vison  
14 Recycling, Inc., or any related affiliates.
- 15          20.    "Disclosure Statement" means the Disclosure Statement Section prepared by the  
16 Debtor as required by Section 1125 of the Bankruptcy Code and approved by an Order of the  
17 Bankruptcy Court.
- 18          21.    "Disputed Claim" means a Claim against the Debtor (a) which has been included in  
19 the Debtor's Schedules as disputed, contingent, or unliquidated, or (b) as to which an objection  
20 has been timely filed and which objection is not the subject of a Final Order and has not been  
21 withdrawn.
- 22          22.    "Effective Date" means the first Business Day after an Order confirming the Plan  
23 becomes final, unless the Bankruptcy Court otherwise determines a different Effective Date for the  
24 Plan.
- 25          22.    "Estate" means the estate created in the Chapter 11 Case for the Debtor under  
26 Section 541 of the Bankruptcy Code.
- 27          23.    "File" or "Filed" means filed with the Bankruptcy Court in the Chapter 11 Case.
- 28          24.    "Final Order" means an order or judgment of the Bankruptcy Court, or other court

1 of competent jurisdiction, as entered on the Court's docket, which has not been reversed, stayed,  
2 modified or amended, and as to which (i) the time to appeal or seek certiorari has expired and no  
3 appeal or petition for certiorari has been timely filed, or (ii) any appeal that has been or may be  
4 taken or any petition for certiorari that has been or may be filed has been resolved by the highest  
5 court to which the order or judgment was appealed or from which certiorari was sought.

6 25. "Order" means an order or judgment of the Bankruptcy Court as entered on its  
7 docket.

8 26. "The Pachecos" means George Pacheco, Lynn Pacheco and Gary Pacheco.

9 27. "Person" means any individual, corporation, general partnership, limited liability  
10 company, limited partnership, association, joint stock company, joint venture, estate, trust,  
11 government or any political subdivision, governmental unit (as defined in the Bankruptcy Code)  
12 or official committee appointed by the United States Trustee.

13 28. "Petition Date" means February 13, 2017, the date upon which this Case was filed.

14 29. "Plan" means the Chapter 11 Plan in this Case and all exhibits and schedules  
15 annexed thereto or referred to therein, as the same may be amended, modified or supplemented  
16 from time to time and any amendment or modification thereof.

17 30. "Post-Confirmation Notice Parties" means counsel for the Reorganized Debtor, the  
18 United States Trustee and any creditor or party in interest who delivers a notice to counsel for the  
19 Reorganized Debtor requesting to be added as a Post-Confirmation Notice Party (so as to receive  
20 notice of post-Confirmation events).

21 31. "Reorganized Debtor" means the Debtor from and after the Effective Date.

22 32. "Schedules" or "Schedules of Assets and Liabilities" means the Schedules of  
23 Assets and Liabilities filed by the Debtor with the Bankruptcy Court, as the same have been or  
24 may be amended from time to time prior to the Effective Date.

25 33. "Secured Claim" means any Claim that is secured by a lien on property in which  
26 the Estate has an interest or that is subject to set off under Section 553 of the Bankruptcy Code.

27 34. "Secured Creditor" means the holder of an Allowed Secured Claim.

28 35. "Unclassified Claims" means the Allowed Amount of (i) all administrative

1 expenses of the Debtor's Chapter 11 Case, allowed pursuant to Section 503(b) of the Bankruptcy  
2 Code, and (ii) all allowed, unsecured Claims entitled to priority pursuant to Section 507(a)(1), (2),  
3 (3), (4) and (6) of the Bankruptcy Code for wages, salaries, vacation, severance, sick pay or  
4 commissions.

5 36. "Unsecured Claims" means the Allowed Amounts of those Claims against the  
6 Debtor for which there are no assets of the Debtor serving as security, but not including any  
7 priority Claims.

8 37. "Unsecured Creditor" means the holder of an Unsecured Claim.

9 **B. Rules of Interpretation**

10 For purposes of the Disclosure Statement: (a) whenever from the context it is appropriate,  
11 each term, whether stated in the singular or the plural, shall include both the singular and the  
12 plural; (b) any reference in the Disclosure Statement to a contract, instrument, release or other  
13 agreement or document being in a particular form or on particular terms and conditions means that  
14 such document shall be substantially in such form or substantially on such terms and conditions;  
15 (c) any references in the Disclosure Statement to an existing document or Exhibit filed or to be  
16 filed means such document or Exhibit, as it may have been or may be amended, modified or  
17 supplemented; (d) unless otherwise specified in a particular reference, all references in the  
18 Disclosure Statement to Sections, Articles and Exhibits are references to Sections, Articles and  
19 Exhibits of or to the Disclosure Statement; (e) the words "herein," "hereof," "hereto," "hereunder"  
20 and others of similar import refer to the Disclosure Statement in its entirety rather than to only a  
21 particular section of the Disclosure Statement; (f) captions and headings to Articles and Sections  
22 are inserted for convenience of reference only and are not intended to be a part of or to affect the  
23 interpretation of the Disclosure Statement; and (g) the rules of construction set forth in Section  
24 102 of the Bankruptcy Code shall apply.

25 **C. Computation of Time**

26 In computing any period of time prescribed or allowed by the Disclosure Statement, the  
27 provisions of Bankruptcy Rule 9006(a) shall apply.

28



1 STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING  
2 ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE  
3 PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST  
4 HOLDERS IN THIS CASE.

5 **C. Time and Place of the Combined Hearing on Approval of Disclosure**  
6 **Statement and Confirmation Hearing**

7 The hearing where the Court will finally approve or disapprove the disclosure statement  
8 and determine whether or not to confirm the Plan will take place on August 21, 2017, at 2:30  
9 p.m., United States Bankruptcy Court, Courtroom 220, 1300 Clay Street, Oakland, California  
10 94612.

11 **D. Deadline For Voting For or Against the Plan**

12 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot  
13 and return the ballot to counsel for the Debtor at the following address:

14 Chris D. Kuhner, Esq.  
15 Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.  
16 1970 Broadway, Suite 225  
17 Oakland, CA 94612  
18 Facsimile: (510) 273-8669  
19 Email: c.kuhner@kornfieldlaw.com

20 Your ballot must be received by 5:00 p.m. PST on August 16, 2017 or it will not be  
21 counted.

22 **E. Deadline For Objecting to the Disclosure Statement and Confirmation of the**  
23 **Plan**

24 Objections to the Disclosure Statement and/or the Confirmation of the Plan must be filed  
25 with the Court and served so that any objections are actually received by counsel for the Debtor by  
26 5:00 p.m. PST on August 16, 2017. Objections must be filed with the Bankruptcy Court and  
27 served on counsel for the Debtor at the following addresses:

28 **Counsel for the Debtor:**

Chris D. Kuhner, Esq.  
Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.  
1970 Broadway, Suite 225



1 Oakland, CA 94612  
2 Facsimile: (510) 273-8669  
3 Email: c.kuhner@kornfieldlaw.com

4 **F. Identity of Person to Contact for More Information Regarding the Plan**

5 Any interested party desiring further information about the Plan should contact counsel for  
6 the Debtor, c/o Chris D. Kuhner, Kornfield, Nyberg, Bendes, Kuhner & Little, P.C., 1970  
7 Broadway, Suite 225, Oakland, CA 94612, (510) 763-1000 or [c.kuhner@kornfieldlaw.com](mailto:c.kuhner@kornfieldlaw.com).

8 **G. General Factual Overview of the Debtor and Summary of Plan**

9 The Debtor was established in 1979 by Gary Pacheco and George Pacheco. George  
10 Pacheco is the President and 25% owner of the Debtor. His wife, Lynn Pacheco, is the Secretary  
11 and 25% owner of the Debtor. Lynn Pacheco is also the Natural Responsible Person for the Debtor  
12 in this Chapter 11 bankruptcy case. Gary Pacheco is the Vice President of the Debtor and 50%  
13 owner of the Debtor.

14 The Debtor is a full service landscape company providing commercial landscape  
15 maintenance, landscape installation, turf renovation and irrigation projects. The Debtor operates  
16 three main divisions. Those divisions are comprised of (1) the Maintenance Division  
17 (“Maintenance Division”); (2) the Landscape Installation and Construction Division (“Landscape  
18 Division”); and (3) the Turf Renovation and Irrigation Projects (“Tractor Division”).

19 The Maintenance Division performs under ongoing monthly/annual contracts at least one  
20 year or longer to manage property, roadways or parks for mowing, edging, hedging, trimming of  
21 shrubbery, light trimming, fertilization application, pre-emergent weed control and irrigation  
22 repair.

23 The Tractor Division performs one-time contracts to turf seed, install sod, oversee or to  
24 add/install/renovate with decomposed granite or cinder fines to property including parks,  
25 roadways, forts, ports, sports fields and tracks. This also includes synthetic cleaning and field  
26 repair, putting down clay, slit seeding and one time weed abatement.

27 The Landscape Division performs one-time contracts to design, install and/or construct  
28 new landscape, new hardscape, new irrigation system, new shrub and new tree planting, new  
arbors, new concrete, new sod and/or ground cover, including any maintenance/upkeep required

1 per contract for up to ninety (90) days.

2 The Company operates out of three offices in Hayward, Oakley and Dublin, California.  
3 The Debtor is well diversified with the majority of its business coming from its Maintenance  
4 Division providing a wide variety of services for clients such as Municipal and Public Agency  
5 accounts, as well as a mix of homeowner's association, commercial building and school districts.

6 In 2014, the Company was experiencing a significant cash flow problem that had its roots  
7 in the great recession of 2008. Initially, the down turn of the economy did not severely impact the  
8 Company, but eventually business started to suffer. Instead of giving substantial consideration to  
9 a contractor's qualifications, experience and non-price factors in determining what bids and  
10 proposal to accept, the Debtor's customers began to base their criteria primarily on price. At the  
11 same time, there was a flood of increased competition from contractors who sought to enter this  
12 specialty area, because traditional work and new building of construction projects had dried up,  
13 and who offered to do work at lower prices than the Debtor offered. As a result, the Debtor began  
14 to get outbid on jobs and contracts it normally would win.

15 In order to offset this lost revenue, the shareholders infused approximately one and a half  
16 million dollars into the company through personal loans from individual shareholder 401k  
17 retirement plans, from Pacheco Investments, LLC, an affiliate company which owned the building  
18 in which the Debtor was then situated, and from friends and family. The Debtor was also forced to  
19 factor its invoices which resulted in paying approximately 20% interest for any borrowed funds  
20 under the terms of the factoring agreement.

21 In December of 2014, the Debtor was running out of cash and had few or no invoices to  
22 factor because the weather had been inclement and the maintenance work could not be performed.  
23 The Debtor reached out to Tom Del Conte, a long-time friend of the Pachecos. Ultimately, on  
24 December 23<sup>rd</sup> and 24<sup>th</sup> of 2014, the Debtor and Del Conte entered into two (2) agreements. One  
25 was a document entitled "Option to Acquire PBG by TDDC With Conditions and Term" ("Option  
26 Agreement") and one labeled "Lending/Factoring Loan to PBG" ("Lending Agreement"). The  
27 Option Agreement provided Del Conte and/or his company TDDC with the option to purchase the  
28 shares of the Company pursuant to the terms of the Option Agreement. The Lending Agreement

1 generally provided that TDDC or any of Del Conte’s affiliated entities would loan the Company  
2 money and the Del Conte Parties believed the Debtor would repay the loan which the Del Conte  
3 Parties’ contended was secured by a lien on the Debtor’s assets, to the extent funds were loaned.  
4 Additionally, the Del Conte Parties allege they paid the Pachecos money for the right to exercise  
5 an option to purchase their shares, or buy the assets of the Debtor. During 2015, TDDC and its  
6 affiliate entities loaned the Debtor funds. At the time of the filing as set forth in their filed Proof  
7 of Claim, they contend they are owed \$780,000 on the note. The Debtor concedes that loan  
8 balance is at least \$374,704 plus interest owed by the Company to the Del Conte Parties. In  
9 addition, the Debtor utilized the services of Del Conte’s controlled entity Vision Recycling, Inc.,  
10 which filed a claim in this bankruptcy estate.

11 During 2015, Del Conte was installed as a Chief Executive Officer of the Debtor. By  
12 November 2015, the Debtor, through its board, concluded that the Company could not function  
13 any longer with Del Conte as CEO. He was terminated and the Agreements were not performed  
14 due to certain disputes. On December 22, 2015, Del Conte Parties filed a Complaint in the  
15 Alameda County Superior Court for specific performance, breach of contract, intentional and  
16 negligent misrepresentation, common counts and appointment of receiver and injunction against  
17 the Debtor and the Pachecos (“State Court Action”).

18 The Debtor, Pachecos and Del Conte Parties litigated the State Court Action for most of  
19 2016. However, due to the prohibitive costs of the ongoing litigation as well as the various past  
20 due vendor accounts and difficulty operating an existing debt structure, the Debtor filed for  
21 Chapter 11 bankruptcy. In addition, the Pachecos have filed personal Chapter 13 bankruptcy cases  
22 which are currently pending in the Northern District of California in front of the Honorable  
23 William J. Lafferty.

24 **1. DEL CONTE AND FREMONT BANK CLAIMS**

25 TDDC Ventures, LLC and Vision Recycling, Inc. have documents evidencing the debt  
26 owed by the Debtor to them. TDDC Ventures, LLC loaned the Debtor money (through various  
27 entities and Mr. Del Conte) with a current balance of \$374,104, plus interest. The Del Conte  
28 Parties contend that the amount outstanding is in excess of \$780,000. The Debtor disputes that this

1 claim is secured and contends it may be subject to equitable subordination based on affirmative  
2 claims the Debtor has against the Del Conte Parties. Vision Recycling is an entity controlled by  
3 Del Conte and it has a current claim against the estate in the amount of \$24,611.24 that is a trade  
4 debt.

5 Del Conte Parties also believe they have substantial damage claims in addition to the  
6 claims listed above against both the Debtor and the Pachecos, which increases their claims to  
7 \$3,500,000, for specific performance, breach of contract, intentional and negligent  
8 misrepresentation. The cost of litigating the claims could easily exceed \$200,000, and if the Del  
9 Conte Parties are successful, their claims will dilute the distribution under this Case since their  
10 claims will exceed the value of all of the remaining claims together.

11 Fremont Bank is the Debtor's largest unsecured creditor holding a filed claim of  
12 approximately \$711,000, plus interest and attorney's fees. Fremont Bank is unsecured as to the  
13 Debtor, but Fremont Bank has a secured claim against Gary Pacheco and George and Lynn  
14 Pacheco evidenced by deeds of trust against their respective residences in the amount of \$400,000  
15 each. Each of the Pachecos has personally guaranteed the full amount of this indebtedness.

16 **2. DEL CONTE SETTLEMENT AND PLAN SUMMARY**

17 Over three lengthy days, including April, 3, 7 and 24 of 2017, and subsequent telephonic  
18 meetings, the Debtor, the Pachecos and Del Conte Parties participated in a settlement conference  
19 with the Honorable Dennis Montali, United States Bankruptcy Court Judge for the Northern  
20 District of California, San Francisco Division. The settlement conference was comprehensive and  
21 hard fought, and ultimately resulted in a global settlement between the Debtor, Del Conte Parties  
22 and the Pachecos. Subsequent to the Settlement Conference, Fremont Bank has also agreed to  
23 certain provisions as described in more detail below which was a condition of the settlement. The  
24 Settlement Agreement between the Debtor, Del Conte Parties and the Pachecos is set forth in the  
25 Settlement Agreement attached as **Exhibit 1** and described in summary form above in Section II  
26 above.

1 **VI. THE GLOBAL SETTLEMENT WHICH PROVIDES THE BASIS FOR THE PLAN**  
2 **IS IN THE BEST INTEREST OF THE ESTATE**

3 The Debtor believes that the proposed Plan, which includes the global settlement of claims  
4 between the Debtor, the Pachecos and Del Conte Parties, is in the best interest of the Estate. This  
5 global compromise of controversies satisfies the factors set forth in *Martin v. Kane (In re A&C*  
6 *Properties)*, 784 F. 2d. 1377, 1381 (9th Cir. 1986). Those factors include (a) the probability of  
7 success in litigation; (b) the difficulties, if any, to be encountered in the matter of collections; (c)  
8 the complexity of the litigation involved and the expense, inconvenience and delay necessary  
9 tending to it; and (d) the paramount interest of creditors and proper deference to their reasonable  
10 views in the premises. In re *A&C Properties*, 784 F.2d. at 1381. In addition to the four-prong test  
11 set forth in *A&C Properties*, it is also well established that the “law favors compromise and not  
12 litigation for its sake.” See *Port O’Call Investment, Co. v. Blair (In re Blair)* 538 F.2d. 849, 851  
13 (9th Cir. 1976). The Debtor believes that the resolution with Del Conte Parties meets these factors.

14 First, the probability of success in litigation favors resolution. Although the Debtor has  
15 affirmative claims against Del Conte, the probability of obtaining a successful outcome is  
16 speculative. In addition, Del Conte has significant claims alleging substantial damages against the  
17 Debtor which he contends total \$3,500,000. Although the Debtor has defenses to these claims, it is  
18 very likely that Mr. Del Conte will have some claim in some amount that most likely totals the  
19 amount of the money that TDDC lent in the amount of \$374,104 plus interest, plus the claims of  
20 Vision Recycling in the amount of \$24,611.24 and a claim under the consulting agreement in the  
21 maximum amount of \$55,000. The Del Conte Parties contend that their loan is secured and if the  
22 Court agreed with them, they would have a significant secured claim in an amount making  
23 confirmation of a plan difficult and payment to unsecured creditors in an amount in excess of what  
24 they are receiving under the Plan remote. Furthermore, as a secured creditor, they have the right to  
25 foreclose on all assets of the Debtor. Although, the Debtor contest the validity of the security  
26 agreement, this is a real risk and a factor supporting the compromise.

27 Second, the difficulty, if any to be encountered in the matter of collection favors  
28 settlement. To the extent the Debtor is successful in any of its affirmative claims against Del

1 Conte, an offset would be available against any monies he claims owed, therefore collection  
2 against Mr. Del Conte is not an issue.

3 Third, the complexity of litigation involved and the expense, the inconvenience and delay  
4 that would result if litigation continued weigh heavily in favor of settlement. Del Conte and the  
5 Debtor have been engaged in a protracted litigation since late 2015. The costs to defend this  
6 litigation as well as to pursue affirmative claims is not affordable to the Debtor. The Debtor's  
7 limited resources would be exhausted and the likely result of expending these resources on  
8 litigation would result in significantly less money paid to creditors or cause the Company to shut  
9 down and convert its case to Chapter 7, in which case creditors would receive a significantly  
10 smaller distribution. Even if the Debtor was able to fund a defense, the cost to do so and the likely  
11 ultimate result of the Del Conte Parties being owed some money would be a hollow victory and  
12 the Debtor would be saddled with this debt going forward.

13 Furthermore, Fremont Bank has agreed to reduce its Allowed Claim to \$600,000 with the  
14 payment of \$300,000 on the effective date of the plan and \$300,000 over four (4) years. Fremont  
15 Bank will be given a secured promissory note, secured by the filing of a UCC-1 Financing  
16 Statement ("Secured Promissory Note"). In the event there is a material default under the Secured  
17 Promissory Note, Fremont bank will have the right to foreclose on the Reorganized Debtor's  
18 assets. The terms of the Secured Promissory Note will be available for review by any creditor or  
19 party in interest requesting a copy on or after August 14, 2017, by contacting counsel for the Del  
20 Conte Parties at the following address: Tracy Green, Wendel, Rosen, Black & Dean, LLP, 1111  
21 Broadway, 24<sup>th</sup> Floor, Oakland, California, 94707, tgreen@wendel.com

22 Finally, the paramount interest of the creditors clearly favors settlement. First, if Del Conte  
23 Parties are successful in establishing a valid secured claim in the amount of \$780,000 there would  
24 be no monies available to pay creditors if the assets were liquidated or very little in any  
25 reorganization, and possibly nothing if the Court granted the Del Conte Parties relief from stay to  
26 allow them to foreclose on their lien. The settlement and proposed Plan result in the Class 9  
27 unsecured creditors being paid \$168,000 in the aggregate which is 26% of the Unsecured Claims  
28 filed or listed in the bankruptcy schedules as not in dispute. However, after claims review and any

1 successful objections to claims, the amount of the unsecured creditor class may be reduced  
2 providing a higher percentage distribution.

3 Under the Plan, the Pachecos (\$390,239) and the Del Conte Parties (\$3,500,000) are  
4 mutually releasing their claims and Fremont Bank (\$711,000) is separately classified and not part  
5 of Class 9, the general unsecured creditors. As a result, there is approximately \$650,000 in non-  
6 Fremont Bank unsecured creditors (before any objections) who will receive \$168,000 to be  
7 distributed pro rata.

8 However, if the settlement is not approved and the Plan not confirmed, the claims of the  
9 Pachecos, Fremont Bank, the landlord of the Hayward office rejection damage claim, and the Del  
10 Conte Parties, to the extent valid, will be included in calculating any distribution to unsecured  
11 creditors in any subsequent liquidation or plan. It is also possible the Del Conte Parties' and  
12 Pachecos' claims will be less than they each contend which would increase the potential  
13 distribution to unsecured creditors. If the claims are included, and Fremont Bank is added to the  
14 unsecured creditors' class, the unsecured creditors will be owed approximately \$5,330,820. As set  
15 forth in Exhibit 2, the liquidation value of the Debtor's assets, after deducting the administrative  
16 costs of a chapter 7 bankruptcy and the estimated chapter 11 administrative costs, is \$626,863.  
17 This equates to a 12% distribution to general unsecured creditors in a hypothetical chapter 7  
18 bankruptcy.

19 This distribution analysis also assumes the Del Conte Parties claim is allowed in the full  
20 amount of the filed claim. A chapter 7 trustee may object to Del Conte's claim and it is possible  
21 that the amount of the claim will be reduced. However, any claim objection would be contested  
22 and consume significant fees and costs, all of which would increase the administrative costs  
23 reducing the available funds for creditors. Even assuming the Del Conte claim was reduced by  
24 50%, the resulting distribution to Class 9 unsecured creditors would only increase to 18% without  
25 taking into consideration the increase administrative cost associated with litigating the claim.

26 Finally, there is a risk that management of the Reorganized Debtor will not be successful  
27 in retaining and/or renewing existing contracts with clients which would have a negative impact  
28 on the Reorganized Debtor's ability to make payments under the Plan.

**VII. PLAN OF REORGANIZATION**

**A. General Overview**

As required by the Bankruptcy Code, the Plan separates claims and interests into various categories and classes according to the nature and legal rights associated with such claims and interests. The Plan designates which classes are impaired and which classes are unimpaired. The Plan also describes the treatment each class will receive under the Plan. The Proponents will ask the Bankruptcy Court to confirm this Plan pursuant to 11 U.S.C. § 1129(b) with respect to any impaired classes if any of these classes do not vote to accept the Plan and if the Plan can otherwise be confirmed. The Settlement Agreement attached to the Disclosure Statement is incorporated herein to the extent this Plan is silent on a specific term. If terms conflict between the Settlement Agreement and the Plan, the Plan will control.

**B. Unclassified Claims**

Certain types of Claims are not placed into voting classes; instead, they are unclassified. Holders of Unclassified Claims are not considered impaired and are not entitled to vote on the Plan; rather the holders of unclassified, unimpaired Claims and interests are automatically entitled to specific treatment provided for them in the Bankruptcy Code.

The following categories of Claims are neither classified nor impaired under the Plan and are not entitled to vote on the Plan.

**1. Administrative Expenses**

Administrative expenses are Claims for costs or expenses of administering the Debtor's Chapter 11 Case that are allowed under Bankruptcy Code Section 507(a)(2). The Bankruptcy Code requires that all Administrative Claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment except ordinary business expenses which are paid according to the contract terms.

Name	Amount (estimated)	Treatment
Kornfield, Nyberg, Bendes, Kuhner & Little, P.C., Attorneys for the Debtor	\$80,000 (Debtor's counsel is holding a pre-petition retainer in the amount of \$37,427, leaving a balance	Paid in full upon Court approval of requested fees subject to the terms of the Settlement Agreement subject to the terms set forth herein.



	of \$42,573)	
Office of the U.S. Trustee Fees	\$5,000	Quarterly fees, as required by 28 U.S.C. § 1930(a)(6), shall be paid until a final decree is entered or the case is dismissed or converted.
<b>TOTAL:</b>	\$47,573	

**Court Approval of Fees Required:**

Requests by professionals for payment of fees and costs are generally subject to review and approval by the Court. Fees of the Court Clerk and the Office of the United States Trustee are not subject to Court approval and may be paid in the ordinary course of business when due.

**2. Priority Tax Claims**

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8). The Code requires that each holder of such a 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding five (5) years from the date of the assessment of such tax.

In this case, there is a priority tax claim that has been filed by the Internal Revenue Service in the amount of \$100.00. The IRS claim will be paid in full on the Effective Date.<sup>1</sup>

**C. Classified Claims And Interests**

**Class 1 – Secured Claim of Direct Capital**

Claim: \$64,000 Allowed Claim of Direct Capital secured by the assets of the Debtor.

Impaired/Not Impaired: Class 1 Claim is not impaired.

Treatment: Holder of Class 1 Claim will retain its lien and be paid pursuant to the underlying loan agreement.

**Class 2 – Secured Claim of Ally Bank**

Claim: \$25,703 Allowed Claim of Ally Bank secured by 2016 Dodge 1500, VIN No. 3C65126DG866239636.

Impaired/Not Impaired: Class 2 is not impaired.

Treatment: Holder of Class 2 will retain its lien and be paid pursuant to the underlying

<sup>1</sup> The Debtor believes this is a “placeholder” claim. The Debtor believes the claim is “0.”

1 loan agreement.

2 **Class 3 – Secured Claim of Deere & Company dba John Deere Financial**

3 Claim: \$19,112 Allowed Claim of Deere & Company secured by Z-Trak Discharge Deck  
4 Model 997S #090966.

5 Impaired/Not Impaired: Class 3 is not impaired.

6 Treatment: Holder of Class 3 will retain its lien and be paid pursuant to the underlying  
7 loan agreement.

8 **Class 4 – Secured Claim of Deere & Company dba John Deere Financial**

9 Claim: \$19,112 Allowed Claim of Deere & Company secured by Z-Trak Discharge Deck  
10 Model 997S #090968.

11 Impaired/Not Impaired: Class 4 is not impaired.

12 Treatment: Holder of Class 4 will retain its lien and be paid pursuant to the underlying  
13 loan agreement.

14 **Class 5 – Secured Claim of Deere & Company dba John Deere Financial**

15 Allowed Claim: \$5,542 secured by Z-Trak Model 997S #081936.

16 Impaired/Not Impaired: Class 5 is not impaired.

17 Treatment: Holder of Class 5 will retain its lien and be paid pursuant to the underlying  
18 loan agreement.

19 **Class 6 – Secured Claim of Deere & Company dba John Deere Financial**

20 Allowed Claim: \$5,542 secured by Z-Trak Model 997S #010677.

21 Impaired/Not Impaired: Class 6 is not impaired.

22 Treatment: Holder of Class 6 will retain its lien and be paid pursuant to the underlying  
23 loan agreement.

24 **Class 7 – Secured Claim of Caterpillar Financial Services**

25 Allowed Claim: \$37,308 secured by Skid Loader SN HRD00917

26 Impaired/Not Impaired: Class 7 is impaired.

27 Treatment: This asset is being transferred to PLC who will continue to make payments  
28 pursuant to the underlying loan agreement.

1           **Class 8 – Fremont Bank**

2           Claim: \$711,000 Allowed Unsecured claim of Fremont Bank.

3           Impaired/Not Impaired: Class 8 is impaired under the Plan.

4           Treatment: The Holder of Class 8 Claim will be paid \$300,000 on the Effective Date of the  
5 Plan and an additional \$300,000 paid monthly in equal installments over four (4) years, pursuant  
6 to a Secured Promissory Note, secured by the assets of the Reorganized Debtor, commencing 60  
7 days after the Effective Date, and will receive a lien on the Reorganized Debtor’s assets. Upon  
8 receipt of the first \$300,000 payment on the Effective Date, Fremont Bank will release the  
9 Pachecos from liability as guarantors of this Class 8 Claim, and Fremont Bank shall release the  
10 deeds of trust securing the Pachecos’ guarantees of this obligation. Nothing in this Plan shall be  
11 interpreted as requiring Fremont Bank to release any other obligation that the Pachecos may owe  
12 Fremont Bank on any other debt. On or after August 14, 2017 The operable documents  
13 controlling Class 8’s treatment including the promissory note and security agreement shall be  
14 made available upon request to Tracy Green at Wendel, Rosen, Black & Dean LLP, 1111  
15 Broadway, 24<sup>th</sup> Floor, Oakland California. (510) 834-6600 orTGreen@wendel.com.

16           **Class 9 – General Unsecured Claims**

17           Claim: General unsecured claims are Allowed Unsecured Claims not entitled to priority  
18 under Code Section 507(a).

19           Impaired/Not Impaired: Class 9 General Unsecured Claims are impaired under the Plan.

20           Treatment: Payment of \$168,000 to the Holders of General Unsecured Claims, paid over  
21 60 months in quarterly payments commencing 90 days after the Effective Date, and continuing  
22 every 90 days thereafter for a total period of 60 months. In addition, Class 9 creditors will also be  
23 paid 80% of the net proceeds of total funds recovered though any Avoidance Claims as set forth in  
24 IX.C. below. Any proceeds paid to the Class 9 Creditors from proceeds of avoidance actions will  
25 be credited to the \$168,000, otherwise required to be paid under this Plan, thereby reducing that  
26 portion of the \$168,000 that the Reorganized Debtor was otherwise obligated to pay Class 9  
27 claims.

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**Class 10 – Equity Holders**

Claim: Those holders who own equity in the Debtor which include the Pachecos.

Impaired/Not Impaired: This Class is impaired under the Plan.

Treatment: The Holder of Class 10 Claims will have their shares canceled and Del Conte Parties (to be specified before the Confirmation Hearing) shall own 100% of the Reorganized Debtor. The Pachecos’ new company, Pacheco Landscape Company (“PLC”), will receive the balance of the \$72,500, less any payments to satisfy unpaid administrative claims pursuant to the terms of the Settlement Agreement, from the Del Conte Parties. George and Lynn Pacheco will be paid \$60,000 by the Reorganized Debtor over a 6-month period beginning ten (10) days after the Effective Date. PLC will also receive certain other assets as set forth in the Settlement Agreement, such as equipment and vehicles valued at approximately \$90,000, and certain proceeds related to contracts that are in the middle of being performed related to the Landscape/Construction Business that PLC will operate. The value of the equipment is based on a two year old appraisal and the Debtor’s opinion as to current value. The value of the unbilled jobs will be determined as of the confirmation date.

**VIII. EXECUTORY CONTRACTS**

The Debtor will be assuming the executory contracts listed on **Exhibit 3** to this Combined Plan and Disclosure Statement. This List may be amended at any time prior to the Confirmation of the Plan, not less than 7 days before the Confirmation Hearing. If it is amended, any party impacted by the amendment will receive notice. The vehicle lease with Ford Motor Credit Company on a 2013 F-350, VIN No. 1FD8X3ETXDEA17573 shall be assumed by the Debtor **and** assigned to PLC, and PLC will be liable for all amounts owed under the lease, and the Reorganized Debtor will have no liability for said lease.

**IX. MEANS OF PERFORMING THE PLAN**

**A. Funding for the Plan**

This Plan will be funded through capital infusion by Del Conte Parties, accumulated cash reserves of the Debtor and the continued operation of the Reorganized Debtor.

1           **B.     Corporate Action**

2           Each of the matters provided for under the Plan involving any corporate action to be taken  
3 or required by the Debtor will, as of the Effective Date, have occurred and be effective, and will  
4 be authorized and approved in all respects without any further action by the Debtor.

5           **C.     Avoidance Claims:**

6           Any Avoidance Claims against the Pachecos are being released under the terms of the  
7 Plan. Any other Avoidance Claims will be prosecuted at the discretion of the Reorganized Debtor.  
8 A list of creditors who were paid within ninety (90) days of the Petition Date and amounts paid is  
9 set forth in **Exhibit 4**, which exhibit the Debtor reserves the right to amend prior to confirmation  
10 of the Plan, and which may be amended after confirmation if it is determined that there are  
11 additional Avoidance Claims, after further review. The face amount of the claims is \$297,614 but  
12 the Debtor believes many of the payments are subject to statutory defenses, such as payments  
13 made in the ordinary course of business. The Reorganized Debtor will pursue any avoidance  
14 claims it determines in its business judgment are viable, and the total net recovery (after  
15 subtracting costs of litigation in all avoidance actions) shall be divided 20% to the Reorganized  
16 Debtor and 80% to the unsecured creditors. These payments will be credited against the \$168,000  
17 otherwise required to be paid to Class 9 claimants under this Plan. The Debtor does not believe  
18 that there are many valid avoidance claims, and thus they have minimal value and are not likely to  
19 add much value to the distributions under this Plan.

20           **D.     Set-Offs**

21           The Debtor may set-off against any Allowed Claim (and distributions to be made thereto),  
22 the claims, rights and causes of action of any nature (regardless of whether such claims, rights, or  
23 causes of action are reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,  
24 unmatured, disputed, undisputed, legal, equitable, secured or unsecured) that the Debtor or the  
25 Estate may hold under applicable non-bankruptcy law (and notwithstanding any limitations or  
26 restrictions placed on such rights under the Bankruptcy Code) against the holder of such Allowed  
27 Claim or any recipient of any distribution in respect of an Allowed Claim.

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1 The holder of a Claim may, pursuant to Bankruptcy Code Section 553 or applicable non-  
2 bankruptcy law, set-off any Allowed Claim such holder possesses against any claim, rights or  
3 causes of action of any nature that the Debtor or the Estate may hold against such holder.

4 Neither the failure to effect such a set-off nor the Allowance of any Claim under this Plan  
5 will waive or release any such Claims, rights and causes of action that any Person may possess  
6 under Bankruptcy Code Section 553 or applicable non-bankruptcy law.

7 **E. Waiver and/or Release**

8 Pursuant to the terms of the Plan and Settlement Agreement: (i) the Debtor waives all  
9 claims it has against the Del Conte Parties and the Pachecos, except for obligations set forth in this  
10 Plan; (ii) the Pachecos waive all claims against the Debtor, the Bankruptcy Estate and Del Conte  
11 Parties; and (iii) the Pachecos and Del Conte Parties waive any claims they have against the  
12 Bankruptcy Estate, the Debtor and against each other.

13 **F. Late Claims Void**

14 Unless otherwise expressly ordered by the Bankruptcy Court or otherwise provided by this  
15 Plan, any Claim filed after the applicable Bar Date will be void and of no force or effect, and will  
16 receive no distributions under this Plan.

17 **G. Allowed and Disputed Claims**

18 A Claim that is an Allowed Claim by operation of law under Section 502 of the  
19 Bankruptcy Code because no objection has been filed to such Claim may become a Disputed  
20 Claim upon the filing of an objection to that Claim or a motion or adversary proceeding which  
21 seeks to estimate, disallow, or subordinate the Claim. The distributions to any Disputed Claim  
22 shall be held in a separate bank account in reserve by the Debtor pending a resolution of the  
23 dispute through the written agreement of the parties or the entry of an order of the Bankruptcy  
24 Court resolving the Disputed Claim.

25 **X. CONFIRMATION REQUIREMENTS AND PROCEDURES**

26 PERSONS CONCERNED WITH CONFIRMATION OF THE PLAN SHOULD  
27 CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A  
28 PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended

1 solely for the purpose of alerting readers about basic confirmation issues, which they may wish to  
2 consider. The Proponents CANNOT and DO NOT represent that the discussion contained below  
3 is a complete summary of the law on this topic. Many requirements must be met before the Court  
4 can confirm a Plan. Some of the requirements include that (i) the Plan must be proposed in good  
5 faith; (ii) the Plan must be accepted by at least one impaired class of creditors; (iii) the Plan pays  
6 creditors more than they would receive in Chapter 7 liquidation, and (iv) the Plan must be feasible.  
7 These requirements are not the only requirements for Plan confirmation.

8 **Who May Vote or Object**

9 **Who May Object to Confirmation of the Plan**

10 Any party in interest may object to the confirmation of the Plan, but as explained below  
11 not everyone is entitled to vote to accept or reject the Plan.

12 **Who May Vote to Accept/Reject the Plan**

13 A creditor or interest holder has a right to vote for or against the Plan if that creditor or  
14 interest holder has a claim which is both (1) allowed or allowed for voting purposes and (2)  
15 classified in an impaired class. While interest holders will not get to vote on the Plan, they may  
16 object to the Plan.

17 **What Is an Allowed Claim/Interest**

18 As noted above, a creditor or interest holder must first have an Allowed Claim or interest  
19 to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in  
20 interest files an objection to the claim. When an objection to a Claim or interest is filed, the  
21 creditor or interest holder holding the claim or interest cannot vote unless the Court, after notice  
22 and hearing, either overrules the objection or allows the claim or interest for voting purposes.

23 **THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS JUNE**  
24 **19, 2017.**

25 A creditor or interest holder may have an Allowed Claim or interest even if a proof of  
26 claim or interest was not timely filed. A Claim is deemed allowed if (1) it is scheduled on the  
27 Debtor's Schedules and such Claim is not scheduled as disputed, contingent or unliquidated, and  
28 (2) no party in interest has objected to the Claim. An interest is deemed allowed if it is scheduled

1 and no party in interest has objected to the interest. All objections with the exception to an  
2 objection based on 11 U.S.C. Section 502(d) to disputed Claims must be filed within ninety (90)  
3 days following the Effective Date or such objections shall be waived and forever barred and the  
4 Claim shall be allowed as an Allowed Claim.

5 **What Is an Impaired Claim/Interest**

6 As noted above, an Allowed Claim or interest only has the right to vote if it is in a class  
7 that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or  
8 contractual rights of the members of that class. For example, a class comprised of general  
9 unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what they  
10 are owed.

11 **Who is Not Entitled to Vote**

12 The following four types of Claims are not entitled to vote: (1) Claims that have been  
13 disallowed; (2) Claims in unimpaired classes; (3) Claims entitled to priority pursuant to Code  
14 sections 507(a)(1), (a)(2), and (a)(8); and (4) Claims in classes that do not receive or retain any  
15 value under the Plan. Claims in unimpaired classes are not entitled to vote because such classes  
16 are deemed to have accepted the Plan. Claims entitled to priority pursuant to Code sections  
17 507(a)(1), (a)(2), and (a)(7) are not entitled to vote because such claims are not placed in classes  
18 and they are required to receive certain treatment specified by the Code. Claims in classes that do  
19 not receive or retain any value under the Plan do not vote because such classes are deemed to have  
20 rejected the Plan. **EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU  
21 MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.**

22 **Votes Necessary to Confirm the Plan**

23 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired  
24 class has accepted the Plan without counting the votes of any insiders within that class, and (2) all  
25 impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by  
26 “cramdown” on non-accepting classes, as discussed below.



1           **Votes Necessary for a Class to Accept the Plan**

2           A class of claims is considered to have accepted the Plan when more than one-half (1/2) in  
3 number and at least two-thirds (2/3) in dollar amount of the Claims which actually voted, voted in  
4 favor of the Plan.

5           **Treatment of Non-accepting Classes**

6           So long as one impaired class accepts the Plan, the Court may nonetheless confirm the  
7 Plan if the non-accepting classes are treated in the manner required by the Code. The process by  
8 which non-accepting classes are forced to be bound by the terms of the Plan is commonly referred  
9 to as “cramdown.” The Code allows the Plan to be “crammed down” on non-accepting classes of  
10 Claims or interests if it meets all consensual requirements except the voting requirements of  
11 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and equitable” toward each  
12 impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and  
13 applicable case law.

14           **Request for Confirmation Despite Non-Acceptance by Impaired Classes**

15           The Proponents may ask the Court to confirm this Plan by cramdown on an impaired class  
16 if it does not vote to accept the Plan.

17           **Liquidation Analysis**

18           Another confirmation requirement is the “Best Interest Test,” which requires a liquidation  
19 analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and  
20 that claimant or interest holder does not vote to accept the Plan, then that claimant or interest  
21 holder must receive or retain under the Plan property of a value not less than the amount that such  
22 holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy  
23 Code.

24           In a Chapter 7 case, the Debtor’s assets are usually sold by a Chapter 7 trustee. Secured  
25 Creditors are paid first from the sales proceeds of properties on which Secured Creditor has a lien.  
26 Administrative Claims are paid next. Next, Unsecured Creditors are paid from any remaining  
27 sales proceeds, according to their rights to priority. Unsecured Creditors with the same priority  
28 share in pro rata to the amount of their Allowed Claim in relationship to the amount of total

1 allowed Unsecured Claims. Finally, interest holders receive the balance, if any, that remains after  
2 all creditors are paid.

3 Usually, for the Court to be able to confirm a Plan, the Court must find that all creditors  
4 and interest holders who do not accept the Plan will receive at least as much under the Plan as  
5 such holders would receive in a Chapter 7 liquidation. See **Exhibit 2** to the Debtor’s liquidation  
6 analysis.

7 **Feasibility**

8 Another requirement for confirmation involves the feasibility of the Plan, which means  
9 that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further  
10 financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such  
11 liquidation or reorganization is proposed in the Plan.

12 There are at least two important aspects of a feasibility analysis. The first aspect considers  
13 whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the  
14 claims and expenses which are entitled to be paid on such date. The Debtor’s maintain that this  
15 aspect of feasibility is satisfied as illustrated here:

16	Cash as of the Effective Date	\$80,000
17	(estimated)	
18	To Pay: Administrative claims	\$47,602
19	Balance after paying these amounts	\$32,398

20  
21 Under the terms of the Settlement Agreement, the Debtor is authorized to use \$30,000  
22 (\$25,000 on the Effective Date and \$5,000 payable three (3) months after the Effective Date) to  
23 pay Administrative Claims, with any balance due to be paid to PLC.

24 The second aspect is whether the Debtor will be able to meet the requirements to pay  
25 creditors under the Plan. First, the Debtor is responsible for the first \$300,000 payment to  
26 Fremont Bank. The Del Conte Parties are responsible for paying the sum of \$72,500 to Debtor’s  
27 counsel to be used for administrative fees, with the balance paid to PLC (which \$72,500 sum has  
28 been paid to Counsel for the Debtor). Therefore, those payments are not the responsibility of the

1 Debtor. The Del Conte Parties understand and agree that if there are insufficient assets to pay the  
2 first \$300,000 to Fremont Bank, they will make that payment as a creditor at confirmation, and  
3 they anticipate having to make the full payment.

4 Second, the Debtor's operation since filing this bankruptcy case show net income as  
5 follows:

6	February	\$19,708
7	March	\$10,800
8	April	\$38,959
9	May	\$28,946
10	June	(\$40,369) <sup>2</sup>

11 Attached as **Exhibit 5** is a copy of the Debtor's projection showing financial projections of  
12 the Reorganized Debtor (without the Landscape Division) through the year ending in 2018. The  
13 revenues generated by the Debtor's operation will be sufficient to make the required payments  
14 under the Plan, and to the extent the Del Conte Parties need additional funds to pay the first  
15 \$300,000 to Fremont Bank, they are agree to make that payment. The Reorganized Debtor is  
16 paying \$168,000 to unsecured creditors over a five (5) year period. As such, the Reorganized  
17 Debtor is obligated to make minimum yearly payments totaling \$33,600 which is feasible based  
18 on the Debtor's income and expenses to date.

19 Tom Del Conte has owned and operated a landscape contracting operation since 1972, (45  
20 years) and an organics recycling business since 1993. Both are very successful, employing up to  
21 220 employees. He has a bachelor's degree in business management, with a concentration in  
22 finance. He creates a business culture of transparency, organization, and sound fundamentals to  
23 which he lectures on from time to time. He and his companies have never defaulted on an  
24 obligation or missed a payroll, he considers integrity and respect for others to be primary virtues.  
25 Tom has been recognized as a National Landscaper Of The Year. He is purpose-driven and is

26  
27 <sup>2</sup> The reasons for the net loss for June 2017 was the Debtor had to make an extra payroll of approximately \$70,000  
28 since June is a five (5) payroll week month. In addition, the Debtor did not book approximately \$42,000 in WIP  
adjustments which will be booked in the July 2017 financials.

1 committed to customer satisfaction and making sure creditors are timely paid. Although the  
2 Debtor's projections demonstrate that the Plan is feasible, and the Del Conte Parties have the  
3 financial wherewithal to make the payments due under the Plan, and have the experience and skills  
4 to operate the Reorganized Debtor going forward, it is possible that there could be circumstances  
5 beyond the parties control that result in the cancellation of contracts, or other business reasons that  
6 management may not be successful.

7 YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL  
8 ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL  
9 STATEMENTS OR THE TAX RAMIFICATIONS TO YOU UNDER THIS PLAN.

10 **XI. DISTRIBUTIONS**

11 **A. Distributions on Account of Allowed Administrative Claims, Allowed Priority**  
12 **Tax Claims, and U.S. Trustee Fees**

13 On the Effective Date, subject to the terms of the Settlement Agreement, the Reorganized  
14 Debtor will distribute Cash as required by this Plan to each Holder of an Administrative Claim and  
15 a Priority Tax Claim that is Allowed on or prior to the Effective Date. The Reorganized Debtor  
16 will distribute Cash as required by this Plan to each Holder of an Administrative Claim and a  
17 Priority Tax Claim that is allowed subsequent to the Effective Date on the first Business Day that  
18 is 14 days after such Administrative Claim, Priority Tax Claim is Allowed, provided that no court  
19 has issued a stay enjoining such distribution. The Reorganized Debtor will also pay statutory fees  
20 of the U.S. Trustee under 28 U.S.C. § 1930 on the Effective Date.

21 **B. Distribution for Class 1 Claim**

22 Reorganized Debtor will continue to make monthly payments to Class 1 creditor.

23 **C. Distribution for Class 2 Claim**

24 Reorganized Debtor will continue to make payments to Class 2 creditor.

25 **D. Distribution for Class 3 Claim**

26 Reorganized Debtor will continue to make payments to Class 3 creditor.

27 **E. Distribution for Class 4 Claim**

28 Reorganized Debtor will continue to make payments to Class 4 creditor.



1           **L. Interest on Allowed Claims**

2           Except as otherwise set forth in this Plan with respect to Classes 1-9, Allowed Claims, no  
3 interest will be paid in respect of any Allowed Claim.

4           **M. No Distributions on Disputed or Disallowed Claims**

5           Except as may otherwise be ordered by the Bankruptcy Court, the Reorganized Debtor will  
6 deposit funds in a reserve account, but make no distribution to the Holder of a Disputed Claim  
7 until the Disputed Claim becomes an Allowed Claim. The Reorganized Debtor will not make  
8 distributions to Holders of Disallowed Claims.

9           **N. Effectuation of Distributions**

10          The Reorganized Debtor will serve as the disbursing agent and will make all distributions  
11 in accordance with the terms of this Plan.

12          **O. Manner of Payments; Delivery of Distributions**

13          The Reorganized Debtor will make all distributions under this Plan in Cash made by check  
14 drawn on a domestic bank or by wire transfer from a domestic bank. Subject to the provisions of  
15 Bankruptcy Rule 2002(g) and except as otherwise provided under this Plan, the Reorganized  
16 Debtor will make distributions to Holders of Allowed Claims at each Holder's address set forth on  
17 the Schedules filed with the Bankruptcy Court unless superseded by a different address set forth in  
18 a timely filed proof of Claim filed by the Holder or if the Reorganized Debtor has been notified in  
19 writing of a change of address.

20          **P. Undeliverable Distributions**

21           **1. Holding of Undeliverable Distributions**

22           If any distribution to any holder of an Allowed Claim is returned as undeliverable, no  
23 further distributions will be made to such holder unless and until the Reorganized Debtor is  
24 notified, in writing, of such Holder's then-current address. The Reorganized Debtor will hold  
25 undeliverable distributions until the earlier of: (a) the date the distribution becomes deliverable,  
26 and (b) the date on which the Reorganized Debtor makes a final distribution to holders of Allowed  
27 Claims. Holders ultimately receiving previously undeliverable distributions will not receive  
28 interest or other accruals of any kind based upon the delay in receipt. The Reorganized Debtor is

1 not required to locate the holder of an Allowed Claim.

2 **2. Failure to Claim Undeliverable Distributions**

3 The Reorganized Debtor will from time to time provide the Bankruptcy Court a list setting  
4 forth the names of those Entities for which distributions have been attempted and have been  
5 returned as undeliverable as of the date thereof (which list/notice shall be served on the affected  
6 Entities when Filed with the Bankruptcy Court). Any holder of a Claim identified in such list that  
7 does not assert its rights pursuant to this Plan to receive a distribution within the earlier of: (a) the  
8 date that is one hundred eighty (180) days from and after the Filing of such list, and (b) 5 business  
9 days before the final Distribution Date will not be entitled to any distributions on Allowed Claims  
10 under this Plan and will be forever barred from asserting any such Claim against the Estate and  
11 any right to receive distributions under this Plan. In such case, any consideration held for  
12 distribution on account of such Claim will revert to the Reorganized Debtor.

13 **3. Uncashed Checks**

14 The Reorganized Debtor is not required to locate the Holder of an Allowed Claim that does  
15 not cash any check representing a distribution payment. If a distribution check has not been cashed  
16 for ninety (90) days after the date of mailing of such check to the Creditor, the Reorganized  
17 Debtor may: (a) stop payment on the check, (b) treat the distribution as undeliverable to be treated  
18 in accordance with Article VI P. of this Plan, or (c) refuse to reissue the check if the Reorganized  
19 Debtor determines that reissuing such check may cause the Reorganized Debtor to incur expense  
20 or inconvenience that is unwarranted in light of the amount of the distribution.

21 **4. Fractional Amounts**

22 Payments of fractions of dollars will not be made. Whenever any payment of a fraction of  
23 a dollar under this Plan would otherwise be called for, the actual payment made will reflect a  
24 rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down.

25 **5. De Minimis Distributions**

26 The Reorganized Debtor will not be required to make a distribution to any Creditor in an  
27 amount less than \$25.00.

28

1           **Q. Compliance with Tax Requirements/Allocation**

2           The Reorganized Debtor will comply with tax withholding and reporting requirements  
3 imposed by any governmental unit in making distributions under this Plan, and will be responsible  
4 for filing any tax returns relating to the Estate. All distributions pursuant to this Plan will be  
5 subject to withholding and reporting requirements. The Reorganized Debtor may withhold  
6 distributions due to any holder of an Allowed Claim until the Holder provides the Reorganized  
7 Debtor with the necessary information to comply with withholding requirements of any  
8 governmental unit. The Reorganized Debtor will pay any withheld distributions to the appropriate  
9 authority. If the holder of an Allowed Claim fails to provide to the Reorganized Debtor with the  
10 information necessary to comply with withholding requirements of any governmental unit within  
11 sixty (60) days after the date of first notification by the Reorganized Debtor to the holder of the  
12 need for such information or for the Cash necessary to comply with any applicable withholding  
13 requirements, then the holder's distributions will be treated as undeliverable. For tax purposes,  
14 distributions received in respect of an Allowed Claim will be allocated first to the principle  
15 amount of such Claim, with any excess allocated to unpaid accrued interest.

16                           **XII. EFFECT OF CONFIRMATION OF PLAN**

17           **A. Discharge**

18           This Plan provides that upon the Effective Date, the Reorganized Debtor shall be  
19 discharged of liability for payments incurred before the Confirmation Date to the extent specified  
20 in 11 U.S.C. § 1141. However, any liability imposed by the Plan on the Reorganized Debtor will  
21 not be discharged.

22           **B. Modification of Plan**

23           The Reorganized Debtor may modify the Plan at any time before confirmation. However,  
24 the Court may require a new disclosure statement and/or re-voting on the Plan if the proponents  
25 modify the Plan before confirmation unless certain exceptions apply.

26           The proponent may also seek to modify the Plan at any time after confirmation so long as:  
27 (1) the Plan has not been substantially consummated; and (2) the Court authorizes the proposed  
28 modifications after notice and a hearing.



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**C. Post-Confirmation Conversion/Dismissal**

A creditor or party in interest may bring a motion to convert or dismiss the case under Section 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been distributed pursuant to the Plan, will revert in the Chapter 7 estate, and the automatic stay will be reimposed upon the reverted property only to the extent that relief from stay was not previously granted by the Court during this case.

**D. Final Decree**

Once the Estate has been fully administered as referred to in Bankruptcy Rule 3022, the Proponent, or such other party as the Court shall designate in the Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. The Debtor may move to dismiss this case, and then later reopen it to obtain the Final Decree, and such dismissal shall not relieve the Reorganized Debtor of compliance with the terms of the Plan, nor interfere with the injunction preventing creditors from enforcing the obligations under this Plan.

Dated: July 31, 2017

Pacheco Brothers Gardening, Inc.

By: /s/ Lynn Pacheco

Its: Secretary and Responsible Party

APPROVED AS TO FORM AND SUBSTANCE:

Dated: July 31, 2017

Kornfield, Nyberg, Bendes, Kuhner & Little, P.C.

By: /s/ Chris D. Kuhner

(Bar No. 173291)

Attorneys for Debtor and Debtor-In-Possession,  
Pacheco Brothers Gardening, Inc.